MONTANA

CODE

ANNOTATED

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MONTANA CODE ANNOTATED

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CHAPTER 1

UNIFORM COMMERCIAL CODE GENERAL PROVISIONS

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Part 1

Short Title, Construction, Application, and Subject Matter of the Code

30-1-101. Short title. (1) Chapters 1 through 9 of this title shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

History: En. Sec. 1-101, Ch. 264, L. 1963; amd. Sec. 12, Ch. 265, L. 1917; R.C.M. 1947, 87A-1-101.

30-1-102. Purposes — rules of construction — variation by agreement. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this code are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History: En. Sec. 1-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-102.

30-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: En. Sec. 1-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-103.

30-1-104. Construction against implicit repeal. This code being a general code intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: En. Sec. 1-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-104.

30-1-105. Territorial application of the code — parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.
Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.
Bulk transfers subject to the Chapter on Bulk Transfers. 30-6-102.
Applicability of the Chapter on Investment Securities. 30-8-106.
Policy and scope of the Chapter on Secured Transactions. 30-9-102 and 30-9-103.

History: En. Sec. 1-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-105.

30-1-106. Remedies to be liberally administered. (1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: En. Sec. 1-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-106.

30-1-107. Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: En. Sec. 1-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-107.

30-1-108. Severability. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: En. Sec. 1-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-108.

30-1-109. Section captions. Section captions are parts of this code.

History: En. Sec. 1-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-109.

30-1-110. Provision for transition. Transactions validly entered into before January 1, 1965, and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this code as though such repeal or amendment had not occurred.

History: En. Sec. 10-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-102.

30-1-111. Laws not repealed. The Chapter on Documents of Title (Chapter 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (30-1-201).

References to a "branch" or "separate office" of a bank in this code are included to preserve uniformity in a Uniform Act and are not to be construed as affecting or amending in any way the laws of this state relative to the operation of branches or separate offices of a bank.

This code does not repeal or modify any of the following provisions: 30-11-504, relating to auctioneer's memorandum of sale; 69-14-216, relating to claims against carriers for damage to livestock; or Title 18, chapter 1, part 4, inclusive, relating to contract actions against the state.

History: En. Sec. 10-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-103.

Part 2

General Definitions and Principles of Interpretation

30-1-201. General definitions. Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors,

a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or endorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time

when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (30-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or endorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208 and 30-4-209) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

History: En. Sec. 1-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-201.

30-1-202. Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History: En. Sec. 1-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-202.

30-1-203. Obligation of good faith. Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

History: En. Sec. 1-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-203.

30-1-204. Time — reasonable time — "seasonably". (1) Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History: En. Sec. 1-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-204.

30-1-205. Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History: En. Sec. 1-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-205.

30-1-206. Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor of securities (30-8-319) nor to security agreements (30-9-203).

History: En. Sec. 1-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-206.

30-1-207. Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

History: En. Sec. 1-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-207.

30-1-208. Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: En. Sec. 1-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-208.

CHAPTER 2

UNIFORM COMMERCIAL CODE SALES

Part 1 — Short Title, General Construction, and Subject Matter

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Part 1

Short Title, General Construction, and Subject Matter

30-2-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Sales.

History: En. Sec. 2-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-101.

30-2-102. Scope — certain security and other transactions excluded from this chapter. Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

History: En. Sec. 2-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-102.

30-2-103. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Acceptance". 30-2-606.
"Banker's credit". 30-2-325.
"Between merchants". 30-2-104.
"Cancellation". 30-2-106(4).
"Commercial unit". 30-2-105.
"Confirmed credit". 30-2-325.
"Conforming to contract". 30-2-106.
"Contract for sale". 30-2-106.
"Cover". 30-2-712.
"Entrusting". 30-2-403.
"Financing agency". 30-2-104.
"Future goods". 30-2-105.
"Goods". 30-2-105.
"Identification". 30-2-501.
"Installment contract". 30-2-612.
"Letter of credit". 30-2-325.
"Lot". 30-2-105.
"Merchant". 30-2-104.
"Overseas". 30-2-323.
"Person in position of seller". 30-2-707.

"Present sale". 30-2-106.
"Sale". 30-2-106.
"Sale on approval". 30-2-326.
"Sale or return". 30-2-326.
"Termination". 30-2-106.

(3) The following definitions in other chapters apply to this chapter:
"Check". 30-3-104.
"Consignee". 30-7-102.
"Consignor". 30-7-102.
"Consumer goods". 30-9-109.
"Dishonor". 30-3-507.
"Draft". 30-3-104.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 2-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-103.

30-2-104. Definitions — "merchant" — "between merchants" — "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (30-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History: En. Sec. 2-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-104.

30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (30-2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History: En. Sec. 2-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-105.

30-2-106. Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation". (1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (30-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

History: En. Sec. 2-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-106.

30-2-107. Goods to be severed from realty — recording. (1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

History: En. Sec. 2-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-107.

Part 2

Form, Formation, and Readjustment of Contract

30-2-201. Formal requirements — statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of

$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606).

History: En. Sec. 2-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-201.

30-2-202. Final written expression — parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade (30-1-205) or by course of performance (30-2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History: En. Sec. 2-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-202.

30-2-203. Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

History: En. Sec. 2-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-203.

30-2-204. Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

History: En. Sec. 2-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-204.

30-2-205. Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History: En. Sec. 2-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-205.

30-2-206. Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History: En. Sec. 2-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-206.

30-2-207. Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.

History: En. Sec. 2-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-207.

30-2-208. Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (30-1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History: En. Sec. 2-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-208.

30-2-209. Modification, rescission and waiver. (1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter (30-2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History: En. Sec. 2-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-209.

30-2-210. Delegation of performance — assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (30-2-609).

History: En. Sec. 2-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-210.

Part 3

General Obligation and Construction of Contract

30-2-301. General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History: En. Sec. 2-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-301.

30-2-302. Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History: En. Sec. 2-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-302.

30-2-303. Allocation or division of risks. Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

History: En. Sec. 2-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-303.

30-2-304. Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

History: En. Sec. 2-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-304.

30-2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History: En. Sec. 2-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-305.

30-2-306. Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by

the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History: En. Sec. 2-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-306.

30-2-307. Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

History: En. Sec. 2-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-307.

30-2-308. Absence of specified place for delivery. Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

History: En. Sec. 2-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-308.

30-2-309. Absence of specific time provisions — notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History: En. Sec. 2-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-309.

30-2-310. Open time for payment or running of credit — authority to ship under reservation. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History: En. Sec. 2-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-310.

30-2-311. Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History: En. Sec. 2-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-311.

30-2-312. Warranty of title and against infringement — buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History: En. Sec. 2-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-312.

30-2-313. Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

History: En. Sec. 2-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-313.

30-2-314. Implied warranty — merchantability — usage of trade. (1) Unless excluded or modified (30-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (30-2-316) other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 2-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-314.

30-2-315. Implied warranty — fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History: En. Sec. 2-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-315.

30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719).

History: En. Sec. 2-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-316.

30-2-317. Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 2-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-317.

30-2-318. Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

History: En. Sec. 2-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-318.

30-2-319. F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-319.

30-2-320. C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-320, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-320.

30-2-321. C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History: En. Sec. 2-321, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-321.

30-2-322. Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History: En. Sec. 2-322, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-322.

30-2-323. Form of bill of lading required in overseas shipment — "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

History: En. Sec. 2-323, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-323.

30-2-324. "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613).

History: En. Sec. 2-324, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-324.

30-2-325. "Letter of credit" term — "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

History: En. Sec. 2-325, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-325.

30-2-326. Sale on approval and sale or return — consignment sales and rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202).

History: En. Sec. 2-326, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-326.

30-2-327. Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed:

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed:

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

History: En. Sec. 2-327, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-327.

Part 4

Title, Creditors, and Good Faith Purchasers

30-2-401. Passing of title — reservation for security — limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn, notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment, and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

History: En. Sec. 2-401, Ch. 264, L. 1963; amd. Sec. 1, Ch. 130, L. 1975; R.C.M. 1947, 87A-2-401.

30-2-402. Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

History: En. Sec. 2-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-402.

30-2-403. Power to transfer — good faith purchase of goods — "entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9), bulk transfers (chapter 6) and documents of title (chapter 7).

History: En. Sec. 2-403, Ch. 264, L. 1963; amd. Sec. 63, Ch. 359, L. 1977; R.C.M. 1947, 87A-2-403.

Part 5

Performance

30-2-501. Insurable interest in goods — manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

History: En. Sec. 2-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-501.

30-2-502. Buyer's right to goods on seller's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

History: En. Sec. 2-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-502.

30-2-503. Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of 30-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

History: En. Sec. 2-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-503.

30-2-504. Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

History: En. Sec. 2-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-504.

30-2-505. Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

History: En. Sec. 2-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-505.

30-2-506. Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

History: En. Sec. 2-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-506.

30-2-507. Effect of seller's tender — delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

History: En. Sec. 2-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-507.

30-2-508. Cure by seller of improper tender or delivery — replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History: En. Sec. 2-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-508.

30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of 30-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510).

History: En. Sec. 2-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-509.

30-2-510. Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

History: En. Sec. 2-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-510.

30-2-511. Tender of payment by buyer — payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (30-3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History: En. Sec. 2-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-511.

30-2-512. Payment by buyer before inspection. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (30-5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

History: En. Sec. 2-512, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-512.

30-2-513. Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (subsection (3) of 30-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History: En. Sec. 2-513, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-513.

30-2-514. When documents deliverable on acceptance — when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

History: En. Sec. 2-514, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-514.

30-2-515. Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute:

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

History: En. Sec. 2-515, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-515.

Part 6

Breach, Repudiation, and Excuse

30-2-601. Buyer's rights on improper delivery. Subject to the provisions of this chapter on breach in installment contracts (30-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (30-2-718 and 30-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

(a) reject the whole; or
(b) accept the whole; or
(c) accept any commercial unit or units and reject the rest.

History: En. Sec. 2-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-601.

30-2-602. Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703).

History: En. Sec. 2-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-602.

30-2-603. Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

History: En. Sec. 2-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-603.

30-2-604. Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

History: En. Sec. 2-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-604.

30-2-605. Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

History: En. Sec. 2-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-605.

30-2-606. What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History: En. Sec. 2-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-606.

30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312).

History: En. Sec. 2-607, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-607.

30-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History: En. Sec. 2-608, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-608.

30-2-609. Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

History: En. Sec. 2-609, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-609.

30-2-610. Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (30-2-703 or 30-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704).

History: En. Sec. 2-610, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-610.

30-2-611. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History: En. Sec. 2-611, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-611.

30-2-612. "Installment contract" — breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History: En. Sec. 2-612, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-612.

30-2-613. Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History: En. Sec. 2-613, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-613.

30-2-614. Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the

buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History: En. Sec. 2-614, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-614.

30-2-615. Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

History: En. Sec. 2-615, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-615.

30-2-616. Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

History: En. Sec. 2-616, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-616.

Part 7

Remedies

30-2-701. Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

History: En. Sec. 2-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-701.

30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

History: En. Sec. 2-702, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-702.

30-2-703. Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (30-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (30-2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (30-2-706);

(e) recover damages for nonacceptance (30-2-708) or in a proper case the price (30-2-709);

(f) cancel.

History: En. Sec. 2-703, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-703.

30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History: En. Sec. 2-704, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-704.

30-2-705. Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History: En. Sec. 2-705, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-705.

30-2-706. Seller's resale including contract for resale. (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of 30-2-711).

History: En. Sec. 2-706, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-706.

30-2-707. "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710).

History: En. Sec. 2-707, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-707.

30-2-708. Seller's damages for nonacceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (30-2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

History: En. Sec. 2-708, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-708.

30-2-709. Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

History: En. Sec. 2-709, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-709.

30-2-710. Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History: En. Sec. 2-710, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-710.

30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706).

History: En. Sec. 2-711, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-711.

30-2-712. "Cover" — buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History: En. Sec. 2-712, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-712.

30-2-713. Buyer's damages for nondelivery or repudiation. (1) Subject to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (30-2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

History: En. Sec. 2-713, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-713.

30-2-714. Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

History: En. Sec. 2-714, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-714.

30-2-715. Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History: En. Sec. 2-715, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-715.

30-2-716. Buyer's right to specific performance or recovery of goods. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

History: En. Sec. 2-716, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-716.

30-2-717. Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

History: En. Sec. 2-717, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-717.

30-2-718. Liquidation or limitation of damages — deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (30-2-706).

History: En. Sec. 2-718, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-718.

30-2-719. Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History: En. Sec. 2-719, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-719.

30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History: En. Sec. 2-720, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-720.

30-2-721. Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History: En. Sec. 2-721, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-721.

30-2-722. Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

History: En. Sec. 2-722, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-722.

30-2-723. Proof of market price — time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History: En. Sec. 2-723, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-723.

30-2-724. Admissibility of market quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History: En. Sec. 2-724, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-724.

30-2-725. Statute of limitations in contracts for sale. (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this code becomes effective.

History: En. Sec. 2-725, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-725.

CHAPTER 3

UNIFORM COMMERCIAL CODE
COMMERCIAL PAPER

Part 1 — Short Title, Form, and Interpretation

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Part 1

Short Title, Form, and Interpretation

30-3-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

History: En. Sec. 3-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-101.

30-3-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-3-410.
"Accommodation party". 30-3-415.
"Alteration". 30-3-407.
"Certificate of deposit". 30-3-104.
"Certification". 30-3-411.
"Check". 30-3-104.
"Definite time". 30-3-109.
"Dishonor". 30-3-507.
"Draft". 30-3-104.
"Holder in due course". 30-3-302.
"Negotiation". 30-3-202.
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"Notice of dishonor". 30-3-508.
"On demand". 30-3-108.
"Presentment". 30-3-504.
"Protest". 30-3-509.
"Restrictive endorsement". 30-3-205.
"Signature". 30-3-401.

(3) The following definitions in other chapters apply to this chapter:

"Account". 30-4-104.
"Banking day". 30-4-104.
"Clearinghouse". 30-4-104.
"Collecting bank". 30-4-105.
"Customer". 30-4-104.
"Depositary bank". 30-4-105.
"Documentary draft". 30-4-104.
"Intermediary bank". 30-4-105.
"Item". 30-4-104.
"Midnight deadline". 30-4-104.
"Payor bank". 30-4-105.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 3-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-102.

30-3-103. Limitations on scope of chapter. (1) This chapter does not apply to money, documents of title or investment securities.

(2) The provisions of this chapter are subject to the provisions of the Chapter on Bank Deposits and Collections (Chapter 4) and Secured Transactions (Chapter 9).

History: En. Sec. 3-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-103.

30-3-104. Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note". (1) Any writing to be a negotiable instrument within this chapter must:

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other chapters of this code, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this chapter as well as to instruments which are so negotiable.

History: En. Sec. 3-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-104.

30-3-105. When promise or order unconditional. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section.

History: En. Sec. 3-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-105.

30-3-106. Sum certain. (1) The sum payable is a sum certain even though it is to be paid:

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

History: En. Sec. 3-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-106.

30-3-107. Money. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

History: En. Sec. 3-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-107.

30-3-108. Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

History: En. Sec. 3-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-108.

30-3-109. Definite time. (1) An instrument is payable at a definite time if by its terms it is payable:

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

History: En. Sec. 3-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-109.

30-3-110. Payable to order. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be endorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly endorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

History: En. Sec. 3-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-110.

30-3-111. Payable to bearer. An instrument is payable to bearer when by its terms it is payable to:

(a) bearer or the order of bearer; or
(b) a specified person or bearer; or
(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

History: **En. Sec. 3-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-111.**

30-3-112. Terms and omissions not affecting negotiability. (1) The negotiability of an instrument is not affected by:
(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or
(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or in the case of default on those obligations the holder may realize on or dispose of the collateral; or
(c) a promise or power to maintain or protect collateral or to give additional collateral; or
(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or
(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or
(f) a term in a draft providing that the payee by endorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or
(g) a statement in a draft drawn in a set of parts (30-3-801) to the effect that the order is effective only if no other part has been honored.
(2) Nothing in this section shall validate any term which is otherwise illegal.

History: **En. Sec. 3-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-112.**

30-3-113. Seal. An instrument otherwise negotiable is within this chapter even though it is under a seal.

History: **En. Sec. 3-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-113.**

30-3-114. Date, antedating, postdating. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.
(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.
(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

History: **En. Sec. 3-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-114.**

30-3-115. Incomplete instruments. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.
(2) If the completion is unauthorized the rules as to material alteration apply (30-3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

History: **En. Sec. 3-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-115.**

30-3-116. Instruments payable to two or more persons. An instrument payable to the order of two or more persons:

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

History: En. Sec. 3-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-116.

30-3-117. Instruments payable with words of description. An instrument made payable to a named person with the addition of words describing him:

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

History: En. Sec. 3-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-117.

30-3-118. Ambiguous terms and rules of construction. The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or endorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with 30-3-604 tenders full payment when the instrument is due.

History: En. Sec. 3-118, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-118.

30-3-119. Other writings affecting instrument. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

History: En. Sec. 3-119, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-119.

30-3-120. Instruments "payable through" bank. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

History: En. Sec. 3-120, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-120.

30-3-121. Instruments payable at bank. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

History: En. Sec. 3-121, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-121.

30-3-122. Accrual of cause of action. (1) A cause of action against a maker or an acceptor accrues:

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

History: En. Sec. 3-122, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-122.

30-3-123. Holder's power to sue on overdue negotiable instruments — transfer. A holder of overdue bills of exchange and promissory notes, as described in 30-3-104 may sue all the parties thereto collectively or severally, but if any of the parties thereto who are not primarily liable for the payment tender the amount of principal, interest, and costs thereon, the holder shall transfer the paper. If a judgment be rendered thereon, the holder shall assign the judgment to such party so making the tender, and in case of refusal he may be compelled to do so by summary proceedings instituted for that purpose in the district court of the district in which he resides.

History: En. Sec. 593, C. Civ. Proc. 1895; re-en. Sec. 6500, Rev. C. 1907; re-en. Sec. 9092, R.C.M. 1921; re-en. Sec. 9092, R.C.M. 1935; amd. Sec. 18, Ch. 265, L. 1977; R.C.M. 1947, 93-2830.

Part 2

Transfer and Negotiation

30-3-201. Transfer — right to endorsement. (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified endorsement of the transferor. Negotiation takes effect only when the endorsement is made and until that time there is no presumption that the transferee is the owner.

History: En. Sec. 3-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-201.

30-3-202. Negotiation. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary endorsement; if payable to bearer it is negotiated by delivery.

(2) An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An endorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not affect its character as an endorsement.

History: En. Sec. 3-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-202.

30-3-203. Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may endorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

History: En. Sec. 3-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-203.

30-3-204. Special endorsement — blank endorsement. (1) A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement.

(2) An endorsement in blank specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially endorsed.

(3) The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement.

History: En. Sec. 3-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-204.

30-3-205. Restrictive endorsements. An endorsement is restrictive which either:

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the endorser or of another person.

History: En. Sec. 3-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-205.

30-3-206. Effect of restrictive endorsement. (1) No restrictive endorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an endorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of 30-3-205) must pay or apply any

value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

(4) The first taker under an endorsement for the benefit of the endorser or another person (subparagraph (d) of 30-3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive endorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of 30-3-304).

History: En. Sec. 3-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-206.

30-3-207. Negotiation effective although it may be rescinded. (1) Negotiation is effective to transfer the instrument although the negotiation is:

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

History: En. Sec. 3-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-207.

30-3-208. Reacquisition. Where an instrument is returned to or reacquired by a prior party he may cancel any endorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his endorsement has been canceled is discharged as against subsequent holders in due course as well.

History: En. Sec. 3-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-208.

Part 3

Rights of a Holder

30-3-301. Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in 30-3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

History: En. Sec. 3-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-301.

30-3-302. Holder in due course. (1) A holder in due course is a holder who takes the instrument:

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

History: En. Sec. 3-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-302.

30-3-303. Taking for value. A holder takes the instrument for value:

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

History: En. Sec. 3-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-303.

30-3-304. Notice to purchaser. (1) The purchaser has notice of a claim or defense if:

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know:

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

History: En. Sec. 3-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-304.

30-3-305. Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from:

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except:

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument.

History: En. Sec. 3-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-305.

30-3-306. Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to:

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (30-3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

History: En. Sec. 3-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-306.

30-3-307. Burden of establishing signatures, defenses and due course. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

History: En. Sec. 3-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-307.

Part 4

Liability of Parties

30-3-401. Signature. (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

History: En. Sec. 3-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-401.

30-3-402. Signature in ambiguous capacity. Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement.

History: En. Sec. 3-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-402.

30-3-403. Signature by authorized representative. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument:

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

History: En. Sec. 3-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-403.

30-3-404. Unauthorized signatures. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

History: En. Sec. 3-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-404.

30-3-405. Impostors — signature in name of payee. (1) An endorsement by any person in the name of a named payee is effective if:

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so endorsing.

History: En. Sec. 3-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-405.

30-3-406. Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

History: En. Sec. 3-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-406.

30-3-407. Alteration. (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

History: En. Sec. 3-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-407.

30-3-408. Consideration. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (30-3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this code under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

History: En. Sec. 3-408, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-408.

30-3-409. Draft not an assignment. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

History: En. Sec. 3-409, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-409.

30-3-410. Definition and operation of acceptance. (1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

History: En. Sec. 3-410, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-410.

30-3-411. Certification of a check. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior endorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper endorsement. If it does so the drawer is discharged.

History: En. Sec. 3-411, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-411.

30-3-412. Acceptance varying draft. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance canceled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and endorser who does not affirmatively assent is discharged.

History: En. Sec. 3-412, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-412.

30-3-413. Contract of maker, drawer and acceptor. (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to 30-3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to endorse.

History: En. Sec. 3-413, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-413.

30-3-414. Contract of endorser — order of liability. (1) Unless the endorsement otherwise specifies (as by such words as "without recourse") every endorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument.

History: En. Sec. 3-414, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-414.

30-3-415. Contract of accommodation party. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An endorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

History: En. Sec. 3-415, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-415.

30-3-416. Contract of guarantor. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

History: En. Sec. 3-416, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-416.

30-3-417. Warranties on presentment and transfer. (1) Any person who obtains payment or acceptance and any prior transfer or warrants to a person who in good faith pays or accepts that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by endorsement to any subsequent holder who takes the instrument in good faith that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

History: En. Sec. 3-417, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-417.

30-3-418. Finality of payment or acceptance. Except for recovery of bank payments as provided in the Chapter on Bank Deposits and Collections (Chapter 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

History: En. Sec. 3-418, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-418.

30-3-419. Conversion of instrument — innocent representative. (1) An instrument is converted when:

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged endorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this code concerning restrictive endorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (30-3-205 and 30-3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor.

History: En. Sec. 3-419, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-419.

Part 5

Presentment, Notice of Dishonor, and Protest

30-3-501. When presentment, notice of dishonor, and protest necessary or permissible. (1) Unless excused (30-3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and endorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any endorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in 30-3-502(1)(b).

(2) Unless excused (30-3-511):

(a) notice of any dishonor is necessary to charge any endorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in 30-3-502(1)(b).

(3) Unless excused (30-3-511) protest of any dishonor is necessary to charge the drawer and endorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an endorser who has endorsed an instrument after maturity.

History: En. Sec. 3-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-501.

30-3-502. Unexcused delay — discharge. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(a) any endorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or endorser is discharged.

History: En. Sec. 3-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-502.

30-3-503. Time of presentment. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, 30 days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, 7 days after his endorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

History: En. Sec. 3-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-503.

30-3-504. How presentment made. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made:

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearinghouse; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in 30-4-210 presentment may be made in the manner and with the result stated in that section.

History: En. Sec. 3-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-504.

30-3-505. Rights of party to whom presentment is made. (1) The party to whom presentment is made may without dishonor require:

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

History: En. Sec. 3-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-505.

30-3-506. Time allowed for acceptance or payment. (1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

History: En. Sec. 3-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-506.

30-3-507. Dishonor — holder's right of recourse — term allowing re-presentment. (1) An instrument is dishonored when:

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (30-4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and endorsers.

(3) Return of an instrument for lack of proper endorsement is not dishonor.

(4) A term in a draft or an endorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptace if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

History: En. Sec. 3-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-507.

30-3-508. Notice of dishonor. (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

History: En. Sec. 3-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-508.

30-3-509. Protest — noting for protest. (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice-consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

History: En. Sec. 3-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-509.

30-3-510. Evidence of dishonor and notice of dishonor. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

History: En. Sec. 3-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-510.

30-3-511. Waived or excused presentment, protest or notice of dishonor or delay therein. (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when:

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when:

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an endorser it binds him only.

History: En. Sec. 3-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-511.

Part 6

Discharge

30-3-601. Discharge of parties. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on:
(a) payment or satisfaction (30-3-603); or
(b) tender of payment (30-3-604); or
(c) cancellation or renunciation (30-3-605); or
(d) impairment of right of recourse or of collateral (30-3-606); or
(e) reacquisition of the instrument by a prior party (30-3-208); or
(f) fraudulent and material alteration (30-3-407); or
(g) certification of a check (30-3-411); or
(h) acceptance varying a draft (30-3-412); or
(i) unexcused delay in presentment or notice of dishonor or protest (30-3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:
(a) reacquires the instrument in his own right; or
(b) is discharged under any provision of this chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (30-3-606).

History: En. Sec. 3-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-601.

30-3-602. Effect of discharge against holder in due course. No discharge of any party provided by this chapter is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

History: En. Sec. 3-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-602.

30-3-603. Payment or satisfaction. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (30-3-201).

History: En. Sec. 3-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-603.

30-3-604. Tender of payment. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

History: En. Sec. 3-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-604.

30-3-605. Cancellation and renunciation. (1) The holder of an instrument may even without consideration discharge any party:

(a) in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

History: En. Sec. 3-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-605.

30-3-606. Impairment of recourse or of collateral. (1) The holder discharges any party to the instrument to the extent that without such party's consent the holder:

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves:

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

History: En. Sec. 3-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-606.

Part 7

Advice of International Sight Draft

30-3-701. Letter of advice of international sight draft. (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

History: En. Sec. 3-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-701.

Part 8

Miscellaneous

30-3-801. Drafts in a set. (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, endorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (30-4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

History: En. Sec. 3-801, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-801.

30-3-802. Effect of instrument on obligation for which it is given. (1) Unless otherwise agreed where an instrument is taken for an underlying obligation:

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

History: En. Sec. 3-802, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-802.

30-3-803. Notice to third party. Where a defendant is sued for breach of an obligation for which a third person is answerable over under this chapter he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this chapter. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after seasonable receipt of the notice the person notified does come in and defend he is so bound.

History: En. Sec. 3-803, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-803.

30-3-804. Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

History: En. Sec. 3-804, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-804.

30-3-805. Instruments not payable to order or to bearer. This chapter applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this chapter but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

History: En. Sec. 3-805, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-805.

CHAPTER 4

UNIFORM COMMERCIAL CODE BANK DEPOSITS AND COLLECTIONS

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Section

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Part 1

General Provisions and Definitions

30-4-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

History: En. Sec. 4-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-101.

30-4-102. Applicability. (1) To the extent that items within this chapter are also within the scope of Chapters 3 and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of Chapter 3 but the provisions of Chapter 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

History: En. Sec. 4-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-102.

30-4-103. Variation by agreement — measure of damages — certain action constituting ordinary care. (1) The effect of the provisions of this chapter may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking usage not disapproved by this chapter, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

History: En. Sec. 4-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-103.

30-4-104. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearinghouse" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Collecting bank". 30-4-105.
"Depositary bank". 30-4-105.
"Intermediary bank". 30-4-105.
"Payor bank". 30-4-105.
"Presenting bank". 30-4-105.
"Remitting bank". 30-4-105.

(3) The following definitions in other chapters apply to this chapter:
"Acceptance". 30-3-410.
"Certificate of deposit". 30-3-104.
"Certification". 30-3-411.
"Check". 30-3-104.
"Draft". 30-3-104.
"Holder in due course". 30-3-302.
"Notice of dishonor". 30-3-508.
"Presentment". 30-3-504.
"Protest". 30-3-509.
"Secondary party". 30-3-102.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 4-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-104.

30-4-105. "Depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank" — "remitting bank". In this chapter unless the context otherwise requires:

(a) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item.

History: En. Sec. 4-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-105.

30-4-106. Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this chapter and under Chapter 3.

History: En. Sec. 4-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-106.

30-4-107. Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History: En. Sec. 4-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-107.

30-4-108. Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this code for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

History: En. Sec. 4-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-108.

30-4-109. Process of posting. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;
(b) ascertaining that sufficient funds are available;
(c) affixing a "paid" or other stamp;
(d) entering a charge or entry to a customer's account;
(e) correcting or reversing an entry or erroneous action with respect to the item.

History: En. Sec. 4-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-109.

Part 2

Collection of Items
Depositary and Collecting Banks

30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank". (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of 30-4-211 and 30-4-212 and 30-4-213) the bank is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this chapter apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank.

History: En. Sec. 4-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-201.

30-4-202. Responsibility for collection — when action seasonable. (1) A collecting bank must use ordinary care in:

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of 30-4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

History: En. Sec. 4-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-202.

30-4-203. Effect of instructions. Subject to the provisions of Chapter 3 concerning conversion of instruments (30-3-419) and the provisions of both Chapter 3 and this chapter concerning restrictive endorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

History: En. Sec. 4-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-203.

30-4-204. Methods of sending and presenting — sending direct to payor bank. (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send:

(a) any item direct to the payor bank;

(b) any item to any nonbank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating letter, clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

History: En. Sec. 4-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-204.

30-4-205. Supplying missing endorsement — no notice from prior endorsement. (1) A depositary bank which has taken an item for collection may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's endorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor.

History: En. Sec. 4-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-205.

30-4-206. Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

History: En. Sec. 4-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-206.

30-4-207. Warranties of customer and collecting bank on transfer or presentment of items — time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item. In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

History: En. Sec. 4-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-207.

30-4-208. Security interest of collecting bank in items, accompanying documents and proceeds. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Chapter 9 except that:

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of 30-9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

History: En. Sec. 4-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-208.

30-4-209. When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

History: En. Sec. 4-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-209.

30-4-210. Presentment by notice of item not payable by, through or at a bank — liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under 30-3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under 30-3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

History: En. Sec. 4-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-210.

30-4-211. Media of remittance — provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item:

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearinghouse or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

History: En. Sec. 4-211, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-211.

30-4-212. Right of charge-back or refund. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of 30-4-211 and subsections (2) and (3) of 30-4-213).

(2) Within the time and manner prescribed by this section and 30-4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (30-4-301).

(4) The right to charge-back is not affected by:

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

History: En. Sec. 4-212, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-212.

30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement. Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of 30-4-211, subsection (2) of 30-4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depositary bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

History: En. Sec. 4-213, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-213.

30-4-214. Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settle-

ment is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of 30-4-211, subsections (1)(d), (2) and (3) of 30-4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

History: En. Sec. 4-214, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-214.

Part 3

Collection of Items — Payor Banks

30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor. (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of 30-4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

History: En. Sec. 4-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-301.

30-4-302. Payor bank's responsibility for late return of item. In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of 30-4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

History: **En. Sec. 4-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-302.**

30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified. (1) Any knowledge, notice or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:
(a) accepted or certified the item;
(b) paid the item in cash;
(c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement;
(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
(e) become accountable for the amount of the item under subsection (1)(d) of 30-4-213 and 30-4-302 dealing with the payor bank's responsibility for late return of items.
(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

History: **En. Sec. 4-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-303.**

Part 4

Relationship Between Payor Bank and Its Customer

30-4-401. When bank may charge customer's account. (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.
(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to:
(a) the original tenor of his altered item; or
(b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History: **En. Sec. 4-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-401.**

30-4-402. Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

History: **En. Sec. 4-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-402.**

30-4-403. Customer's right to stop payment — burden of proof of loss. (1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in 30-4-303.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only 6 months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

History: En. Sec. 4-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-403.

30-4-404. Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

History: En. Sec. 4-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-404.

30-4-405. Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

History: En. Sec. 4-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-405.

30-4-406. Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank:

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within 3 years from that time discover and report any unauthorized endorsement is precluded from asserting against the bank such unauthorized signature or endorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

History: En. Sec. 4-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-406.

30-4-407. Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

History: En. Sec. 4-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-407.

Part 5

Collection of Documentary Drafts

30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

History: En. Sec. 4-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-501.

30-4-502. Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

History: En. Sec. 4-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-502.

30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need. Unless otherwise instructed and except as provided in Chapter 5 a bank presenting a documentary draft:

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions. But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

History: En. Sec. 4-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-503.

30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

History: En. Sec. 4-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-504.

CHAPTER 5

UNIFORM COMMERCIAL CODE
LETTERS OF CREDIT

Part 1 — Letters of Credit

Section
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30-5-106. Time and effect of establishment of credit.
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30-5-108. "Notation credit" — exhaustion of credit.
30-5-109. Issuer's obligation to its customer.
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30-5-112. Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter".
30-5-113. Indemnities.
30-5-114. Issuer's duty and privilege to honor — right to reimbursement.
30-5-115. Remedy for improper dishonor or anticipatory repudiation.
30-5-116. Transfer and assignment.
30-5-117. Insolvency of bank holding funds for documentary credit.

Part 1

Letters of Credit

30-5-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

History: En. Sec. 5-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-101.

30-5-102. Scope. (1) This chapter applies:

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this chapter does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This chapter deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this code or may hereafter develop. The fact that this chapter states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this chapter.

History: En. Sec. 5-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-102.

30-5-103. Definitions. (1) In this chapter unless the context otherwise requires:

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (30-5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Notation of credit". 30-5-108.

"Presenter". 30-5-112(3).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "acceptance". 30-3-410.
"Contract for sale". 30-2-106.
"Draft". 30-3-104.
"Holder in due course". 30-3-302.
"Midnight deadline". 30-4-104.
"Security". 30-8-102.

(4) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 5-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-103.

30-5-104. Formal requirement — signing. (1) Except as otherwise required in subsection (1)(c) of 30-5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

History: En. Sec. 5-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-104.

30-5-105. Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

History: En. Sec. 5-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-105.

30-5-106. Time and effect of establishment of credit. (1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

History: En. Sec. 5-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-106.

30-5-107. Advice of credit — confirmation — error in statement of terms. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

History: En. Sec. 5-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-107.

30-5-108. "Notation credit" — exhaustion of credit. (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit:

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.

(3) If the credit is not a notation credit:

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

History: En. Sec. 5-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-108.

30-5-109. Issuer's obligation to its customer. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge.

History: En. Sec. 5-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-109.

30-5-110. Availability of credit in portions — presenter's reservation of lien or claim. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

History: En. Sec. 5-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-110.

30-5-111. Warranties on transfer and presentment. (1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Chapters 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Chapter 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Chapters 7 and 8.

History: En. Sec. 5-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-111.

30-5-112. Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter". (1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto. Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

History: En. Sec. 5-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-112.

30-5-113. Indemnities. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

History: En. Sec. 5-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-113.

30-5-114. Issuer's duty and privilege to honor — right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (30-7-507) or of a security (30-8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (30-3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (30-7-502) or a bona fide purchaser of a security (30-8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

History: En. Sec. 5-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-114.

30-5-115. Remedy for improper dishonor or anticipatory repudiation. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (30-2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under 30-2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under 30-2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

History: En. Sec. 5-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-115.

30-5-116. Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Chapter 9 on Secured Transactions and is governed by that chapter except that:

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Chapter 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

History: En. Sec. 5-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-116.

30-5-117. Insolvency of bank holding funds for documentary credit. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by paragraphs (a) or (b) of 30-5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

History: En. Sec. 5-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-117.

CHAPTER 6

UNIFORM COMMERCIAL CODE
BULK TRANSFERS

Part 1 — Bulk Transfers

Section
30-6-101. Short title.
30-6-102. "Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter.
30-6-103. Transfers excepted from this chapter.
30-6-104. Schedule of property, list of creditors.
30-6-105. Notice to creditors.
30-6-106. Application of the proceeds.
30-6-107. The notice.

30-6-108. Auction sales — "auctioneer".
30-6-109. What creditors protected — credit for payment to particular creditors.
30-6-110. Subsequent transfers.
30-6-111. Limitation of actions and levies.

Part 1

Bulk Transfers

30-6-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

History: En. Sec. 6-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-101.

30-6-102. "Bulk transfer" — transfers of equipment — enterprises subject to this chapter — bulk transfers subject to this chapter. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (30-9-109) of an enterprise subject to this chapter.

(2) A transfer of a substantial part of the equipment (30-9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

History: En. Sec. 6-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-102.

30-6-103. Transfers excepted from this chapter. The following transfers are not subject to this chapter:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for 2 consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

History: En. Sec. 6-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-103.

30-6-104. Schedule of property, list of creditors. (1) Except as provided with respect to auction sales (30-6-108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) the transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) the parties prepare a schedule of the property transferred sufficient to identify it; and

(c) the transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the county clerk and recorder of the county of residence of the transferor, and also in the office of the county clerk and recorder of the county in which the property transferred is located at the time of transfer.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

History: En. Sec. 6-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-104.

30-6-105. Notice to creditors. In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (30-6-108) is ineffective against any creditor of the transferor unless at least 10 days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (30-6-107).

History: En. Sec. 6-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-105.

30-6-106. Application of the proceeds. In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this chapter for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (30-6-104) or filed in writing in the place stated in the notice (30-6-107) within 30 days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) The transferee may within 10 days after he takes possession of the goods pay the consideration into the district court in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

History: En. Sec. 6-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-106.

30-6-107. The notice. (1) The notice to creditors (30-6-105) shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (30-6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (30-6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

History: En. Sec. 6-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-107.

30-6-108. Auction sales — "auctioneer". (1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (30-6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (30-6-104);

(b) give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this chapter (30-6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to

the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

History: En. Sec. 6-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-108.

30-6-109. What creditors protected — credit for payment to particular creditors. (1) The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (30-6-105 and 30-6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this chapter concerning the application of the proceeds (30-6-106 and subsection (3)(c) of 30-6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

History: En. Sec. 6-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-109.

30-6-110. Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this chapter, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

History: En. Sec. 6-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-110.

30-6-111. Limitation of actions and levies. No action under this chapter shall be brought nor levy made more than 6 months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within 6 months after its discovery.

History: En. Sec. 6-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-111.

CHAPTER 7

UNIFORM COMMERCIAL CODE WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

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Part 1

General

30-7-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Documents of Title.

History: En. Sec. 7-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-101.

30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definition in Chapter 1 (30-1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.
"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.
"Overseas". 30-2-323.
"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 7-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-102.

30-7-103. Relation of chapter to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

History: En. Sec. 7-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-103.

30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

History: En. Sec. 7-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-104.

30-7-105. Construction against negative implication. The omission from either Part 2 or Part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

History: En. Sec. 7-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-105.

Part 2

Warehouse Receipts — Special Provisions

30-7-201. Who may issue a warehouse receipt — storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

History: En. Sec. 7-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-201.

30-7-202. Form of warehouse receipt — essential terms — optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (30-7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this code and do not impair his obligation of delivery (30-7-403) or his duty of care (30-7-204). Any contrary provisions shall be ineffective.

History: En. Sec. 7-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-202.

30-7-203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

History: En. Sec. 7-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-203.

30-7-204. Duty of care — contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

History: En. Sec. 7-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-204.

30-7-205. Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

History: En. Sec. 7-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-205.

30-7-206. Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (30-7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

History: En. Sec. 7-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-206.

30-7-207. Goods must be kept separate — fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

History: En. Sec. 7-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-207.

30-7-208. Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

History: En. Sec. 7-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-208.

30-7-209. Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Chapter on Secured Transactions (Chapter 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under 30-7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-209.

30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-210.

Part 3

Bills of Lading — Special Provisions

30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling. (1) A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

History: En. Sec. 7-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-301.

30-7-302. Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

History: En. Sec. 7-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-302.

30-7-303. Diversion — reconsignment — change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

History: En. Sec. 7-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-303.

30-7-304. Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

History: En. Sec. 7-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-304.

30-7-305. Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

History: En. Sec. 7-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-305.

30-7-306. Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History: En. Sec. 7-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-306.

30-7-307. Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-307.

30-7-308. Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of 30-7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-308.

30-7-309. Duty of care — contractual limitation of carrier's liability. (1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

History: En. Sec. 7-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-309.

Part 4

Warehouse Receipts and Bills of Lading
General Obligations

30-7-401. Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(a) the document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

History: En. Sec. 7-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-401.

30-7-402. Duplicate receipt or bill — overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

History: En. Sec. 7-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-402.

30-7-403. Obligation of warehouseman or carrier to deliver — excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Chapter on Sales (30-2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this chapter (30-7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under 30-7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

History: En. Sec. 7-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-403.

30-7-404. No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

History: En. Sec. 7-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-404.

Part 5

Warehouse Receipts and Bills of Lading Negotiation and Transfer

30-7-501. Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his endorsement and delivery. After his endorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

History: En. Sec. 7-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-501.

30-7-502. Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of 30-7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such

goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

History: En. Sec. 7-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-502.

30-7-503. Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (30-7-403) or with power of disposition under this code (30-2-403 and 30-9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

History: En. Sec. 7-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-503.

30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

History: En. Sec. 7-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-504.

30-7-505. Endorser not a guarantor for other parties. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

History: En. Sec. 7-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-505.

30-7-506. Delivery without endorsement — right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

History: En. Sec. 7-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-506.

30-7-507. Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

History: En. Sec. 7-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-507.

30-7-508. Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

History: En. Sec. 7-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-508.

30-7-509. Receipt or bill — when adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Chapters on Sales (Chapter 2) and on Letters of Credit (Chapter 5).

History: En. Sec. 7-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-509.

Part 6

Warehouse Receipts and Bills of Lading Miscellaneous Provisions

30-7-601. Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in

an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within 1 year after delivery.

History: En. Sec. 7-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-601.

30-7-602. Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History: En. Sec. 7-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-602.

30-7-603. Conflicting claims — interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

History: En. Sec. 7-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-603.

Part 7

Penalties

30-7-701. Penalty for issuing receipt when goods have not been delivered. A warehouseman or any officer, agent, or servant of a warehouseman who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: En. Sec. 50, Ch. 154, L. 1917; re-en. Sec. 4128, R.C.M. 1921; re-en. Sec. 4128, R.C.M.1935; R.C.M. 1947, 88-150.

30-7-702. Penalty for fraudulently issuing receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 51, Ch. 154, L. 1917; re-en. Sec. 4129, R.C.M. 1921; re-en. Sec. 4129, R.C.M. 1935; R.C.M. 1947, 88-151.

30-7-703. Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate". A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost, stolen, or destroyed receipt after proceedings as provided for in 30-7-601, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: En. Sec. 52, Ch. 154, L. 1917; re-en. Sec. 4130, R.C.M. 1921; re-en. Sec. 4130, R.C.M. 1935; amd. Sec. 11-154, Ch. 264, L. 1963; R.C.M. 1947, 88-152.

30-7-704. Penalty for issuing negotiable receipt for goods which warehouseman owns. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 53, Ch. 154, L. 1917; re-en. Sec. 4131, R.C.M. 1921; re-en. Sec. 4131, R.C.M. 1935; R.C.M. 1947, 88-153.

30-7-705. Penalty for delivering goods without obtaining possession of outstanding negotiable receipt. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except where the receipt has been lost, stolen, or destroyed or the goods have been lawfully sold or disposed of to satisfy a warehouseman's lien or because of their perishable or hazardous nature, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding $1,000 or by both.

History: En. Sec. 54, Ch. 154, L. 1917; re-en. Sec. 4132, R.C.M. 1921; re-en. Sec. 4132, R.C.M. 1935; amd. Sec. 11-155, Ch. 264, L. 1963; R.C.M. 1947, 88-154.

30-7-706. Penalty for negotiating receipt for goods with defective title. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 55, Ch. 154, L. 1917; re-en. Sec. 4133, R.C.M. 1921; re-en. Sec. 4133, R.C.M. 1935; R.C.M. 1947, 88-155.

CHAPTER 8

UNIFORM COMMERCIAL CODE INVESTMENT SECURITIES

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Part 1

Short Title and General Matters

30-8-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Investment Securities.

History: En. Sec. 8-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-101.

30-8-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) A "security" is an instrument which:

(i) is issued in bearer or registered form; and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this chapter and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that chapter. This chapter does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation:

(a) at least 90% of the capital stock of which is held by or for one or more persons, other than individuals, each of whom:

(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and does not hold in excess of 20% of the capital stock of the corporation; or

(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 and does not hold in excess of 20% of the capital stock of the corporation; or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934; and

(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim". 30-8-301.
"Bona fide purchaser". 30-8-302.
"Broker". 30-8-303.
"Guarantee of the signature". 30-8-402.
"Intermediary bank". 30-4-105.
"Issuer". 30-8-201.
"Overissue". 30-8-104.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 8-102, Ch. 264, L. 1963; amd. Sec. 1, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-102.

30-8-103. Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

History: En. Sec. 8-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-103.

30-8-104. Effect of overissue — "overissue". (1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but:

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

History: En. Sec. 8-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-104.

30-8-105. Securities negotiable — presumptions. (1) Securities governed by this chapter are negotiable instruments.

(2) In any action on a security:

(a) unless specifically denied in the pleading, each signature on the security or in a necessary endorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (30-8-202).

History: En. Sec. 8-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-105.

30-8-106. Applicability. The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

History: En. Sec. 8-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-106.

30-8-107. Securities deliverable — action for price. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price:

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

History: En. Sec. 8-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-107.

Part 2

Issue — Issuer

30-8-201. "Issuer". (1) With respect to obligations on or defenses to a security "issuer" includes a person who:

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (Part 4 of this chapter) "issuer" means a person on whose behalf transfer books are maintained.

History: En. Sec. 8-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-201.

30-8-202. Issuer's responsibility and defenses — notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (30-8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

History: En. Sec. 8-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-202.

30-8-203. Staleness as notice of defects or defenses. (1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than 1 year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

History: En. Sec. 8-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-203.

30-8-204. Effect of issuer's restrictions on transfer. Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

History: En. Sec. 8-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-204.

30-8-205. Effect of unauthorized signature on issue. An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

History: En. Sec. 8-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-205.

30-8-206. Completion or alteration of instrument. (1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

History: En. Sec. 8-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-206.

30-8-207. Rights of issuer with respect to registered owners. (1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

History: En. Sec. 8-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-207.

30-8-208. Effect of signature of authenticating trustee, registrar or transfer agent. (1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

(a) the security is genuine and in proper form; and

(b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

History: En. Sec. 8-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-208.

Part 3

Purchase

30-8-301. Rights acquired by purchaser — "adverse claim" — title acquired by bona fide purchaser. (1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

History: En. Sec. 8-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-301.

30-8-302. "Bona fide purchaser". A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or endorsed to him or in blank.

History: En. Sec. 8-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-302.

30-8-303. "Broker". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

History: En. Sec. 8-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-303.

30-8-304. Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if:

(a) the security whether in bearer or registered form has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

History: En. Sec. 8-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-304.

30-8-305. Staleness as notice of adverse claims. An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase:

(a) after 1 year from any date set for such presentment or surrender for redemption or exchange; or

(b) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

History: En. Sec. 8-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-305.

30-8-306. Warranties on presentment and transfer. (1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (30-8-311) in a necessary endorsement.

(2) A person by transferring a security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

History: En. Sec. 8-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-306.

30-8-307. Effect of delivery without endorsement — right to compel endorsement. Where a security in registered form has been delivered to a purchaser without a necessary endorsement he may become a bona fide purchaser only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

History: En. Sec. 8-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-307.

30-8-308. Endorsement, how made — special endorsement — endorser not a guarantor — partial assignment. (1) An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

(3) "An appropriate person" in subsection (1) means:

(a) the person specified by the security or by special endorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or endorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or endorsement so specified more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the endorser by his endorsement assumes no obligation that the security will be honored by the issuer.

(5) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an endorsement by such a person does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this chapter.

History: En. Sec. 8-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-308.

30-8-309. Effect of endorsement without delivery. An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the endorsement is on a separate document until delivery of both the document and the security.

History: En. Sec. 8-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-309.

30-8-310. Endorsement of security in bearer form. An endorsement of a security in bearer form may give notice of adverse claims (30-8-304) but does not otherwise affect any right to registration the holder may possess.

History: En. Sec. 8-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-310.

30-8-311. Effect of unauthorized endorsement. Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness:

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized endorsement is subject to liability for improper registration (30-8-404).

History: En. Sec. 8-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-311.

30-8-312. Effect of guaranteeing signature or endorsement. (1) Any person guaranteeing a signature of an endorser of a security warrants that at the time of signing:

(a) the signature was genuine; and

(b) the signer was an appropriate person to endorse (30-8-308); and

(c) the signer had legal capacity to sign. But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an endorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of endorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

History: En. Sec. 8-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-312.

30-8-313. When delivery to the purchaser occurs — purchaser's broker as holder. (1) Delivery to a purchaser occurs when:

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially endorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under 30-8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

History: En. Sec. 8-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-313.

30-8-314. Duty to deliver, when completed. (1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

History: En. Sec. 8-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-314.

30-8-315. Action against purchaser based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized endorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this chapter on unauthorized endorsements (30-8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

History: En. Sec. 8-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-315.

30-8-316. Purchaser's right to requisites for registration of transfer on books. Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

History: En. Sec. 8-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-316.

30-8-317. Attachment or levy upon security. (1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History: En. Sec. 8-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-317.

30-8-318. No conversion by good faith delivery. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them.

History: En. Sec. 8-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-318.

30-8-319. Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

History: En. Sec. 8-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-319.

30-8-320. Transfer or pledge within a central depository system. (1) If a security:

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (30-8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (30-9-304 and 30-9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this chapter.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the

entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list.

History: En. Sec. 8-320, Ch. 264, L. 1963; amd. Sec. 2, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-320.

Part 4

Registration

30-8-401. Duty of issuer to register transfer. (1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if:

(a) the security is endorsed by the appropriate person or persons (30-8-308); and

(b) reasonable assurance is given that those endorsements are genuine and effective (30-8-402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (30-8-403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

History: En. Sec. 8-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-401.

30-8-402. Assurance that endorsements are effective. (1) The issuer may require the following assurance that each necessary endorsement (30-8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (subsection (1) of 30-8-312) of the person endorsing; and

(b) where the endorsement is by an agent, appropriate assurance of authority to sign;

(c) where the endorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the endorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (3)(b) both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

History: En. Sec. 8-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-402.

30-8-403. Limited duty of inquiry. (1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of 30-8-402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of 30-8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.

History: En. Sec. 8-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-403.

30-8-404. Liability and nonliability for registration. (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

(a) there were on or with the security the necessary endorsements (30-8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (30-8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by 30-8-104.

History: En. Sec. 8-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-404.

30-8-405. Lost, destroyed and stolen securities. (1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by 30-8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

History: En. Sec. 8-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-405.

30-8-406. Duty of authenticating trustee, transfer agent or registrar. (1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

History: En. Sec. 8-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-406.

CHAPTER 9

UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS SALES OF ACCOUNTS, CONTRACT RIGHTS, AND CHATTEL PAPER

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Part 1

Short Title, Applicability, and Definitions

30-9-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

History: En. Sec. 9-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-101.

30-9-102. Policy and scope of chapter. (1) Except as otherwise provided in 30-9-103 on multiple state transactions and in 30-9-104 on excluded transactions, this chapter applies so far as concerns any personal property and fixtures within the jurisdiction of this state:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in 30-9-310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

History: En. Sec. 9-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-102.

30-9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest. (1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this chapter; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this chapter governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for 4 months and also thereafter if within the 4-month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the 4-month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

History: En. Sec. 9-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-103.

30-9-104. Transactions excluded from chapter. This chapter does not apply:

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of setoff; or

(j) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

History: En. Sec. 9-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-104.

30-9-105. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of Chapter 1 (30-1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in 30-3-104), or a security (defined in 30-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.
"Consumer goods". 30-9-109(1).
"Contract right". 30-9-106.
"Equipment". 30-9-109(2).
"Farm products". 30-9-109(3).
"General intangibles". 30-9-106.
"Inventory". 30-9-109(4).
"Lien creditor". 30-9-301(3).
"Proceeds". 30-9-306(1).
"Purchase money security interest". 30-9-107.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.
"Contract for sale". 30-2-106.
"Holder in due course". 30-3-302.
"Note". 30-3-104.
"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 9-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-105.

30-9-106. Definitions — "account" — "contract right" — "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

History: En. Sec. 9-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-106.

30-9-107. Definitions — "purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is:

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

History: **En. Sec. 9-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-107.**

30-9-108. When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

History: **En. Sec. 9-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-108.**

30-9-109. Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory". Goods are:

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

History: **En. Sec. 9-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-109.**

30-9-110. Sufficiency of description. For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

History: **En. Sec. 9-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-110.**

30-9-111. Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under Chapter 6.

History: **En. Sec. 9-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-111.**

30-9-112. Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under 30-9-502(2) or under 30-9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(a) to receive statements under 30-9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under 30-9-505;

(c) to redeem the collateral under 30-9-506;

(d) to obtain injunctive or other relief under 30-9-507(1); and

(e) to recover losses caused to him under 30-9-208(2).

History: En. Sec. 9-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-112.

30-9-113. Security interests arising under Chapter on Sales. A security interest arising solely under the Chapter on Sales (Chapter 2) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the Chapter on Sales (Chapter 2).

History: En. Sec. 9-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-113.

Part 2

Validity of Security Agreement and Rights of Parties Thereto

30-9-201. General validity of security agreement. Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History: En. Sec. 9-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-201.

30-9-202. Title to collateral immaterial. Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

History: En. Sec. 9-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-202.

30-9-203. Enforceability of security interest — proceeds, formal requisites. (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties unless:

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction although subject to this chapter, is also subject to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, and Title 31, chapter 1, part 4, as amended,

and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

History: En. Sec. 9-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-203.

30-9-204. When security interest attaches — after-acquired property — future advances. (1) A security interest cannot attach until there is agreement (subsection (3) of 30-1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights:

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause:

(a) to crops which become such more than 1 year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (30-9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

History: En. Sec. 9-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-204.

30-9-205. Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

History: En. Sec. 9-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-205.

30-9-206. Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Chapter on Sales (Chapter 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

History: En. Sec. 9-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-206.

30-9-207. Rights and duties when collateral is in secured party's possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

History: En. Sec. 9-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-207.

30-9-208. Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he

must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

History: En. Sec. 9-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-208.

Part 3

Rights of Third Parties — Perfected and Unperfected Security Interests — Rules of Priority

30-9-301. Persons who take priority over unperfected security interests — "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

History: En. Sec. 9-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-301.

30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 30-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under 30-9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under 30-9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (30-4-208) or arising under the Chapter on Sales or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) Except for financing statements filed pursuant to 30-9-409, the filing provisions of this chapter do not apply to a security interest in property subject to a statute:

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) Except for financing statements filed pursuant to 30-9-409, a security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

History: En. Sec. 9-302, Ch. 264, L. 1963; amd. Sec. 13, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302.

30-9-303. When security interest is perfected — continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in 30-9-302, 30-9-304, 30-9-305 and 30-9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

History: En. Sec. 9-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-303.

30-9-304. Perfection of security interest in instruments, documents and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

History: En. Sec. 9-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-304.

30-9-305. When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection (2)(a) of 30-5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

History: En. Sec. 9-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-305.

30-9-306. "Proceeds" — secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the 10-day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest:

(a) in identifiable noncash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

History: En. Sec. 9-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-306.

30-9-307. Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of 30-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2,500 (other than fixtures, see 30-9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

History: En. Sec. 9-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-307.

30-9-308. Purchase of chattel paper and nonnegotiable instruments. A purchaser of chattel paper or a nonnegotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under 30-9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (30-9-306), even though he knows that the specific paper is subject to the security interest.

History: En. Sec. 9-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-308.

30-9-309. Protection of purchasers of instruments and documents. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a bona fide purchaser of a security (30-8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

History: En. Sec. 9-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-309.

30-9-310. Priority of certain liens arising by operation of law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

History: En. Sec. 9-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-310.

30-9-311. Alienability of debtor's rights — judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

History: En. Sec. 9-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-311.

30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; 30-9-301 on certain priorities; 30-9-304 on goods covered by documents; 30-9-306 on proceeds and repossessions; 30-9-307 on buyers of goods; 30-9-308 on possessory against nonpossessory interests in chattel paper or nonnegotiable instruments; 30-9-309 on security interests in negotiable instruments, documents or securities; 30-9-310 on priorities between perfected security interests and liens by operation of law; 30-9-313 on security interests in fixtures as against interests in real estate; 30-9-314 on security interests in accessions as against interest in goods; 30-9-315 on conflicting security interests where goods lose their identity or become part of a product; and 30-9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under 30-9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under 30-9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under 30-9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

History: En. Sec. 9-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-312.

30-9-313. Priority of security interests in fixtures. (1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metalwork and the like and no security interest in them exists under this chapter unless the structure remains personal property under applicable law. The law of this state other than this code determines whether and when other goods become fixtures. This code does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over:

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History: En. Sec. 9-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-313.

30-9-314. Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to 30-9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History: En. Sec. 9-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-314.

30-9-315. Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under 30-9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

History: En. Sec. 9-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-315.

30-9-316. Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History: En. Sec. 9-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-316.

30-9-317. Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

History: En. Sec. 9-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-317.

30-9-318. Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 30-9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

History: En. Sec. 9-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-318.

Part 4

Filing

30-9-401. Place of filing — erroneous filing — removal of collateral. (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in 30-9-103 determine whether filing is necessary in this state.

History: En. Sec. 9-401, Ch. 264, L. 1963; amd. Sec. 15, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-401.

30-9-402. Formal requisites of financing statement — amendments. (1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to 30-9-409 when the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)....
Address ....
Name of secured party (or assignee)....
Address ....
Name of record owner or record lessee ....
Address ....

1. This financing statement covers the following types (or items) of property:
(Describe)....

2. (If collateral is crops) The above described crops are growing or are to be grown on:
(Describe Real Estate)....

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:
(Describe Real Estate)....

4. (If proceeds or products of collateral are claimed) Proceeds— Products of the collateral are also covered.

Signature of Debtor (or Assignor)....
Signature of Secured Party (or Assignee)....

(4) The term "financing statement" as used in this chapter means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967; R.C.M. 1947, 87A-9-402.

30-9-403. What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) A filed financing statement which states a maturity date of the obligation secured of 5 years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such 60-day period after a stated maturity date or on the expiration of such 5-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for 5 years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within 6 months before and 60 days after a stated maturity date of 5 years or less, and (ii) otherwise within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspec-

tion. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) Except financing statements filed pursuant to 30-9-409, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be $15. In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be $2.

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-403.

30-9-404. Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number, and by document number, as the case may be. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be $2. If the affected secured party fails to send such a termination statement within 10 days after proper demand therefor he shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $15. In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be $2.

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-404.

30-9-405. Assignment of security interest — duties of filing officer — fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 30-9-403(4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $15. In all other cases the uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $2.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, and except as provided in 30-9-409(2), a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be $15. In all other cases the uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be $2.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971; amd. Sec. 16, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-405.

30-9-406. Release of collateral — duties of filing officer — fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except as provided in 30-9-409(2)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be $15. In all other cases the uniform fee for filing and noting such a statement of release shall be $2.

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971; amd. Sec. 17, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-406.

30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the name and addresses of each secured party therein. The uniform fee for such a certificate shall be $3. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-407.

30-9-408. Financing statements of transmitting utilities — definitions. As used in 30-9-408 through 30-9-410, "transmitting utility" means:

(1) any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water; and

(2) any other corporation primarily engaged in the production, transmission or distribution of electricity, or the furnishing of telephone service, whether or not such corporation is subject to the jurisdiction of a state or federal regulatory body.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967; R.C.M. 1947, 87A-9-302.1(a).

30-9-409. Utility financing statement — place of filing — contents — perfection of security interest. (1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection (1).

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967; amd. Sec. 14, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302.2.

30-9-410. Continued applicability of laws to transmitting utilities. Unless displaced by the specific provisions of 30-9-408 through 30-9-410, this code and other applicable laws remain in full force and effect and supplement the provisions of 30-9-408 through 30-9-410.

History: En. Sec. 3, Ch. 76, L. 1965; R.C.M. 1947, 87A-9-302.3.

30-9-411. Security agreements and termination statements — when destroyed. Termination statements filed under this chapter shall be retained by the filing officer for a period of 8 years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by this chapter and as to which no termination statement has been filed, shall be retained by the filing officer for a period of 8 years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed.

History: En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963; R.C.M. 1947, 59-516.1.

Part 5

Default

30-9-501. Default — procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in 30-9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in 30-9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of 30-9-505) and with respect to redemption of collateral (30-9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of 30-9-502 and subsection (2) of 30-9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of 30-9-504 and subsection (1) of 30-9-505 which deal with disposition of collateral;

(c) subsection (2) of 30-9-505 which deals with acceptance of collateral as discharge of obligation;

(d) section 30-9-506 which deals with redemption of collateral; and

(e) subsection (1) of 30-9-507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

History: En. Sec. 9-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-501.

30-9-502. Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under 30-9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

History: En. Sec. 9-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-502.

30-9-503. Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under 30-9-504.

History: En. Sec. 9-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-503.

30-9-504. Secured party's right to dispose of collateral after default — effect of disposition. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Chapter on Sales (Chapter 2). The proceeds of disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must

be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

History: En. Sec. 9-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-504.

30-9-505. Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation. (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under 30-9-504 and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

History: En. Sec. 9-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-505.

30-9-506. Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under 30-9-504 or before the obligation has been discharged under 30-9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

History: En. Sec. 9-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-506.

30-9-507. Secured party's liability for failure to comply with this part. (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

History: En. Sec. 9-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-507.

30-9-508. Foreclosure of security interests in personal property. (1) An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest, but the remedial scope of proceedings for the foreclosure of interests subject to this chapter is governed by this part.

(2) A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property or any part thereof may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party or his representatives or assigns may in good faith purchase the property so sold or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the property. Notice of sale, application of the

proceeds, liability for deficiency, and effect of disposition shall be as provided in 30-9-504.

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R.C.M. 1921; re-en. Sec. 8286, R.C.M. 1935; amd. Sec. 11-135, Ch. 264, L. 1963; R.C.M. 1947, 52-312.

30-9-509. Sales — commencement and postponement. All sales made under the provisions of 30-9-508 shall be commenced between the hours of 9 a.m. and 5 p.m. of the day specified in the notice and within 30 days after the seizure of the property unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff 1 week by public announcement at the time designated for the sale to take place when there are no bidders, when the amount offered is grossly inadequate, or upon the request of the debtor.

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R.C.M. 1921; re-en. Sec. 8287, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963; R.C.M. 1947, 52-313.

30-9-510. Report of sales and filing thereof. Within 10 days after the sale of any property subject to a security interest as herein provided, the person making the sale shall make out in writing a full report under oath of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed. The report shall be received in all courts as prima facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file.

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R.C.M. 1921; re-en. Sec. 8288, R.C.M. 1935; amd. Sec. 11-137, Ch. 264, L. 1963; R.C.M. 1947, 52-314.

30-9-511. Counsel fees on foreclosure. In an action to foreclose a security interest in personal property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, notwithstanding any stipulation in the instrument or any agreement between the parties to the contrary.

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).

CHAPTER 10

SECURITIES REGULATION

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Part 1

General Application

30-10-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Securities Act of Montana".

History: En. Sec. 2, Ch. 251, L. 1961; R.C.M. 1947, 15-2002.

30-10-102. Policy. Parts 1 through 3 of this chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 251, L. 1961; R.C.M. 1947, 15-2003.

30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means investment commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker—dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker--dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company;

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee; or

(c) a person who has no place of business in this state if during any period of 12 consecutive months he does not direct more than 15 offers to sell or to buy into this state in any manner to persons other than those specified in subsection (b).

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if:

(i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(ii) during any period of 12 consecutive months he does not direct business communications into this state in any manner to more than five resident clients other than those specified in subsection (i); or

(g) such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons per-

forming similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(8) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

History: En. Sec. 4, Ch. 251, L. 1961; R.C.M. 1947, 15-2004.

30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 shall not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing or any certificate of deposit for any of the foregoing;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing;

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

History: En. Sec. 13, Ch. 251, L. 1961; R.C.M. 1947, 15-2013.

30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any isolated transaction, whether effected through a broker-dealer or not;

(2) (a) any nonissuer distribution of an outstanding security by a registered broker-dealer if:

(i) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

(b) the commissioner may by order deny or revoke the exemption specified in this subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) any transaction pursuant to an offer directed by the offerer to not more than 10 persons (other than those designated in subsection (7) of this section) in this state during any period of 12 consecutive months, whether or not the offerer or any of the offerees is then present in this state, if:

(a) the seller reasonably believes that all the buyers are purchasing for investment; and

(b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the Federal Securities and Exchange Act of 1933 as amended;

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(13) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

History: En. Sec. 14, Ch. 251, L. 1961; amd. Sec. 1, Ch. 185, L. 1973; R.C.M. 1947, 15-2014.

30-10-106. Proof of exemption. In any proceeding under parts 1 through 3 of this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: En. Sec. 25, Ch. 251, L. 1961; R.C.M. 1947, 15-2025.

30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter shall be under the general supervision and control of the state auditor, the ex officio investment commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of parts 1 through 3 of this chapter. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of parts 1 through 3 of this chapter authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) No provision of parts 1 through 3 of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders which have ever been entered under parts 1 through 3 of this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(6) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(1), (3) thru (7).

Part 2

Registration of Dealers and Securities

30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(2) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the sum of $5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subsection (8) of this section, registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an applica-

tion containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection (8) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

History: En. Sec. 6, Ch. 251, L. 1961; amd. Sec. 1, Ch. 265, L. 1977; amd. Sec. 1, Ch. 275, L. 1977; R.C.M. 1947, 15-2006.

30-10-202. Registration of securities. It is unlawful for any person to offer to sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless such security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter.

History: En. Sec. 7, Ch. 251, L. 1961; R.C.M. 1947, 15-2007.

30-10-203. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208.

(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at 3 p.m. mountain standard time the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

History: En. Sec. 8, Ch. 251, L. 1961; R.C.M. 1947, 15-2008.

30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) three copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date; and

(h) a consent to service of process meeting the requirements of 30-10-208.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement

or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: En. Sec. 9, Ch. 251, L. 1961; R.C.M. 1947, 15-2009.

30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection (1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

History: En. Sec. 10, Ch. 251, L. 1961; R.C.M. 1947, 15-2010.

30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under parts 1 through 3 of this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent of the commissioner; however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) During the period of public offering in the initial distribution of securities registered under the provisions of parts 1 through 3 of this chapter by notification or qualification, financial data or statements corresponding to those required under the provisions of 30-10-203(2) and 30-10-205 and to the issuer's fiscal year shall be filed with the commissioner annually, not less than 90 days after the end of each such year. If such statements are not certified, the commissioner may verify them by examining the issuer's books and records.

History: En. Sec. 11, Ch. 251, L. 1961; amd. Sec. 1, Ch. 71, L. 1963; amd. Sec. 1, Ch. 150, L. 1977; R.C.M. 1947, 15-2011.

30-10-207. Denial, suspension, and revocation of registration of securities. (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated, in connection with the offering by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection (c) more than 1 year from the date of the injunction relied on; and

(ii) he may not enter an order under this subsection (c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and he shall vacate any such order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

(3) Upon the entry of an order under subsection (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

History: En. Sec. 12, Ch. 251, L. 1961; R.C.M. 1947, 15-2012.

30-10-208. Consent to service of process. (1) Every applicant for registration as a broker-dealer or investment adviser or salesman under parts 1 through 3 of this chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at its or his last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: En. Sec. 15, Ch. 251, L. 1961; amd. Sec. 1, Ch. 105, L. 1963; R.C.M. 1947, 15-2015.

30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) For the registration of securities by notification or coordination or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $100 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/20 of 1% for any excess over $100,000, with a maximum of $1,000.

(2) Each year thereafter that a registration remains in effect for securities with respect to which reports are required to be filed under 30-10-206(4), an additional registration fee shall be paid to the commissioner to be computed at 1/20 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $100 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered. When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee.

(3) For filing an annual statement, the fee shall be $10.

(4) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal thereof. When an application is denied or withdrawn, the commissioner shall retain the fee.

(5) For registration of a salesman, the fee shall be $25 for original registration with each employer and $25 for each annual renewal. When an application is denied or withdrawn, the commissioner shall retain the fee.

(6) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(7) For a request for an exemption or exception to the provisions of this chapter, the fee shall be $25.

History: En. Sec. 16, Ch. 251, L. 1961; amd. Sec. 1, Ch. 242, L. 1977; R.C.M. 1947, 15-2016.

30-10-210. Examination costs. (1) Any issuer or broker-dealer who is investigated or examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established and adopted by the commissioner upon July 1, 1961, and annually thereafter upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder.

(3) If any issuer or broker-dealer fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(2).

Part 3

Offenses and Penalties

30-10-301. Prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise, to:

(a) employ any device, scheme, or artifice to defraud the other person; or

(b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

History: En. Sec. 5, Ch. 251, L. 1961; R.C.M. 1947, 15-2005.

30-10-302. Misleading filings. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under parts 1 through 3 of this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: En. Sec. 17, Ch. 251, L. 1961; R.C.M. 1947, 15-2017.

30-10-303. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under 30-10-201(2) or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: En. Sec. 18, Ch. 251, L. 1961; R.C.M. 1947, 15-2018.

30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by

the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Sec. 19, Ch. 251, L. 1961; R.C.M. 1947, 15-2019.

30-10-305. Injunctions. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

History: En. Sec. 20, Ch. 251, L. 1961; R.C.M. 1947, 15-2020.

30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than 3 years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than 1 year shall be mandatory. No indictment or information may be returned under parts 1 through 3 of this chapter more than 5 years after the alleged violation.

(2) The commissioner may refer such evidence as may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) Nothing in parts 1 through 3 of this chapter limits the power of the state to punish any person for any conduct which constitutes a crime.

History: En. Sec. 21, Ch. 251, L. 1961; R.C.M. 1947, 15-2021.

30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 6% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or

performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 6% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under 30-10-307(1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 6% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest.

History: En. Sec. 22, Ch. 251, L. 1961; amd. Sec. 1, Ch. 213, L. 1967; R.C.M. 1947, 15-2022.

30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History: En. Sec. 23, Ch. 251, L. 1961; R.C.M. 1947, 15-2023.

Part 4

Fiduciary Security Transfers

30-10-401. Short title. This part may be cited as the "Uniform Act for the Simplification of Fiduciary Security Transfers".

History: En. Sec. 11, Ch. 101, L. 1963; R.C.M. 1947, 15-662.

30-10-402. Definitions. In this part, unless the context otherwise requires, the following definitions apply:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association, or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

History: En. Sec. 1, Ch. 101, L. 1963; R.C.M. 1947, 15-652.

30-10-403. Registration in the name of fiduciary. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

History: En. Sec. 2, Ch. 101, L. 1963; R.C.M. 1947, 15-653.

30-10-404. Assignment by fiduciary. Except as otherwise provided in this part, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

History: En. Sec. 3, Ch. 101, L. 1963; R.C.M. 1947, 15-654.

30-10-405. Evidence of appointment or incumbency. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (2) except to the extent that the contents relate directly to the appointment or incumbency.

History: En. Sec. 4, Ch. 101, L. 1963; R.C.M. 1947, 15-655.

30-10-406. Adverse claims. (1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this part relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

History: En. Sec. 5, Ch. 101, L. 1963; R.C.M. 1947, 15-656.

30-10-407. Nonliability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this part.

History: En. Sec. 6, Ch. 101, L. 1963; R.C.M. 1947, 15-657.

30-10-408. Nonliability of third persons. (1) No person who participates in the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this part incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

History: En. Sec. 7, Ch. 101, L. 1963; R.C.M. 1947, 15-658.

30-10-409. Territorial application. (1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(2) This part applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History: En. Sec. 8, Ch. 101, L. 1963; R.C.M. 1947, 15-659.

30-10-410. Tax obligations. This part does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

History: En. Sec. 9, Ch. 101, L. 1963; R.C.M. 1947, 15-660.

30-10-411. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 10, Ch. 101, L. 1963; R.C.M. 1947, 15-661.

CHAPTER 11

SALES

Part 1 — Sales and Exchanges

Section

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Part 1

Sales and Exchanges

30-11-101. Sale defined. Sale is a contract by which, for a pecuniary consideration called a price, one transfers to another an interest in property.

History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R.C.M. 1921; Cal. Civ. C. Sec. 1721; Field Civ. C. Sec. 855; re-en. Sec. 7581, R.C.M. 1935; R.C.M. 1947, 74-101.

30-11-102. Subject of sale. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: En. Sec. 2311, Civ. C. 1895; re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. 7582, R.C.M. 1921; Cal. Civ. C. Sec. 1722; Field Civ. C. Sec. 856; re-en. Sec. 7582, R.C.M. 1935; R.C.M. 1947, 74-102.

30-11-103. Agreement for sale. An agreement for sale is either:
(1) an agreement to sell;
(2) an agreement to buy; or
(3) a mutual agreement to sell and buy.

History: En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R.C.M. 1921; Cal. Civ. C. Sec. 1726; Field Civ. C. Sec. 857; re-en. Sec. 7583, R.C.M. 1935; R.C.M. 1947, 74-103.

30-11-104. Agreement to sell. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R.C.M. 1921; Cal. Civ. C. Sec. 1727; Field Civ. C. Sec. 858; re-en. Sec. 7584, R.C.M. 1935; R.C.M. 1947, 74-104.

30-11-105. Agreement to buy. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

History: En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R.C.M. 1921; Cal. Civ. C. Sec. 1728; Field Civ. C. Sec. 859; re-en. Sec. 7585, R.C.M. 1935; R.C.M. 1947, 74-105.

30-11-106. Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

History: En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R.C.M. 1921; Cal. Civ. C. Sec. 1729; Field Civ. C. Sec. 860; re-en. Sec. 7586, R.C.M. 1935; R.C.M. 1947, 74-106.

30-11-107. What may be the subject of the contract. Any property which, if in existence, might be the subject of sale may be the subject of an agreement for sale, whether in existence or not.

History: En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R.C.M. 1921; Cal. Civ. C. Sec. 1730; Field Civ. C. Sec. 861; re-en. Sec. 7587, R.C.M. 1935; R.C.M. 1947, 74-107.

30-11-108. Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R.C.M. 1921; Cal. Civ. C. Sec. 1731; Based on Field Civ. C. Sec. 862; re-en. Sec. 7588, R.C.M. 1935; R.C.M. 1947, 74-108.

30-11-109. Usual common-law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances".

History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R.C.M. 1921; Cal. Civ. C. Sec. 1733; Field Civ. C. Sec. 863; re-en. Sec. 7589, R.C.M. 1935; R.C.M. 1947, 74-109.

30-11-110. Form of covenants. The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R.C.M. 1921; Cal. Civ. C. Sec. 1734; Field Civ. C. Sec. 864; re-en. Sec. 7590, R.C.M. 1935; R.C.M. 1947, 74-110.

30-11-111. Contract for sale of real property. No agreement for the sale of real property or of any interest therein is valid unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R.C.M. 1921; Cal. Civ. C. Sec. 1741; Based on Field Civ. C. Sec. 867; re-en. Sec. 7593, R.C.M. 1935; R.C.M. 1947, 74-203.

30-11-112. Exchange defined. Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing nor both things being money only.

History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R.C.M. 1921; Cal. Civ. C. Sec. 1804; Field Civ. C. Sec. 903; re-en. Sec. 7632, R.C.M. 1935; R.C.M. 1947, 74-501.

30-11-113. Sale equivalent to exchange. The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives and of a buyer as to that which he takes.

History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R.C.M. 1921; Cal. Civ. C. Sec. 1806; Field Civ. C. Sec. 905; re-en. Sec. 7634, R.C.M. 1935; R.C.M. 1947, 74-503.

30-11-114. Warranty of money. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: En. Sec. 2433, Civ. C. 1895; re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. 7635, R.C.M. 1921; Cal. Civ. C. Sec. 1807; Field Civ. C. Sec. 906; re-en. Sec. 7635, R.C.M. 1935; R.C.M. 1947, 74-504.

30-11-115. Uniform Commercial Code overrides. The provisions of this [part] shall not apply to exchanges subject to the Uniform Commercial Code.

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963; R.C.M. 1947, 74-505.

Part 2

Seller's Responsibilities

30-11-201. When a seller must act as a depositary. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: En. Sec. 2350, Civ. C. 1895; re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. 7598, R.C.M. 1921; Cal. Civ. C. Sec. 1748; Field Civ. C. Sec. 869; re-en. Sec. 7598; R.C.M. 1935; R.C.M. 1947, 74-301.

30-11-202. When seller may resell. If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the law on liens.

History: En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R.C.M. 1921; Cal. Civ. C. Sec. 1749; Field Civ. C. Sec. 870; re-en. Sec. 7599, R.C.M. 1935; R.C.M. 1947, 74-302.

30-11-203. Delivery on demand. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R.C.M. 1921; Cal. Civ. C. Sec. 1753; Field Civ. C. Sec. 871; re-en. Sec. 7600, R.C.M. 1935; R.C.M. 1947, 74-303.

30-11-204. Delivery — where made. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R.C.M. 1921; Cal. Civ. C. Sec. 1754; Field Civ. C. Sec. 872; re-en. Sec. 7601, R.C.M. 1935; R.C.M. 1947, 74-304.

30-11-205. Expense of transportation. One who sells personal property must bring it to his own door or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R.C.M. 1921; Cal. Civ. C. Sec. 1755; Field Civ. C. Sec. 873; re-en. Sec. 7602, R.C.M. 1935; R.C.M. 1947, 74-305.

30-11-206. Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

History: En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R.C.M. 1921; Cal. Civ. C. Sec. 1756; Field Civ. C. Sec. 874; re-en. Sec. 7603, R.C.M. 1935; R.C.M. 1947, 74-306.

30-11-207. Transportation. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending or it will be at his own risk during its transportation. If he follows such directions or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

History: En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R.C.M. 1921; Cal. Civ. C. Sec. 1757; Field Civ. C. Sec. 875; re-en. Sec. 7604, R.C.M. 1935; R.C.M. 1947, 74-307.

30-11-208. Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R.C.M. 1921; Cal. Civ. C. Sec. 1758; Field Civ. C. Sec. 876; re-en. Sec. 7605, R.C.M. 1935; R.C.M. 1947, 74-308.

30-11-209. Warranty defined. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R.C.M. 1921; Cal. Civ. C. Sec. 1763; Field Civ. C. Sec. 877; re-en. Sec. 7606, R.C.M. 1935; R.C.M. 1947, 74-309.

30-11-210. No implied warranty in mere contract of sale. Except as prescribed by this part, a mere contract of sale or agreement to sell does not imply a warranty.

History: En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R.C.M. 1921; Cal. Civ. C. Sec. 1764; Field Civ. C. Sec. 878; re-en. Sec. 7607, R.C.M. 1935; R.C.M. 1947, 74-310.

30-11-211. Warranty of title to personal property. One who sells or agrees to sell personal property as his own thereby warrants that he has a good and unencumbered title thereto.

History: En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R.C.M. 1921; Cal. Civ. C. Sec. 1765; Field Civ. C. Sec. 879; re-en. Sec. 7608, R.C.M. 1935; R.C.M. 1947, 74-311.

30-11-212. Warranty on sale by sample. One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample.

History: En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R.C.M. 1921; Cal. Civ. C. Sec. 1766; Field Civ. C. Sec. 880; re-en. Sec. 7609, R.C.M. 1935; R.C.M. 1947, 74-312.

30-11-213. Warranty when seller knows that buyer relies on his statements. One who sells or agrees to sell personal property knowing that the buyer relies upon his advice or judgment thereby warrants to the buyer that neither the seller nor any agent employed by him in the transaction knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R.C.M. 1921; Cal. Civ. C. Sec. 1767; Field Civ. C. Sec. 881; re-en. Sec. 7610, R.C.M. 1935; R.C.M. 1947, 74-313.

30-11-214. Warranty when merchandise not in existence. One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care.

History: En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R.C.M. 1921; Cal. Civ. C. Sec. 1768; Field Civ. C. Sec. 882; re-en. Sec. 7611, R.C.M. 1935; R.C.M. 1947, 74-314.

30-11-215. Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: En. Sec. 2376, Civ. C. 1895; re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. 7612, R.C.M. 1921; Cal. Civ. C. Sec. 1769; Field Civ. C. Sec. 883; re-en. Sec. 7612, R.C.M. 1935; R.C.M. 1947, 74-315.

30-11-216. Warranty of fitness for particular purpose. One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose.

History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R.C.M. 1921; Cal. Civ. C. Sec. 1770; Field Civ. C. Sec. 884; re-en. Sec. 7613, R.C.M. 1935; R.C.M. 1947, 74-316.

30-11-217. Warranty when thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer thereby warrants that it is sound and merchantable.

History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R.C.M. 1921; Cal. Civ. C. Sec. 1771; Field Civ. C. Sec. 885; re-en. Sec. 7614, R.C.M. 1935; R.C.M. 1947, 74-317.

30-11-218. Warranty that trademark is genuine. One who sells or agrees to sell any article to which there is affixed or attached a trademark thereby warrants that trademark to be genuine and lawfully used.

History: En. Sec. 2379, Civ. C. 1895; re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. 7615, R.C.M. 1921; Cal. Civ. C. Sec. 1772; Field Civ. C. Sec. 886; re-en. Sec. 7615, R.C.M. 1935; R.C.M. 1947, 74-318.

30-11-219. Warranty of truth of other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured, or prepared thereby warrants the truth thereof.

History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R.C.M. 1921; Cal. Civ. C. Sec. 1773; Field Civ. C. Sec. 887; re-en. Sec. 7616, R.C.M. 1935; R.C.M. 1947, 74-319.

30-11-220. Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto where that is material, the extinction of its obligations, or its invalidity for any cause.

History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R.C.M. 1921; Cal. Civ. C. Sec. 1774; Field Civ. C. Sec. 888; re-en. Sec. 7617, R.C.M. 1935; R.C.M. 1947, 74-320.

30-11-221. Warranty on sale of goodwill. One who sells the goodwill of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec. 7619, R.C.M. 1921; Cal. Civ. C. Sec. 1776; Field Civ. C. Sec. 890; re-en. Sec. 7619, R.C.M. 1935; R.C.M. 1947, 74-322.

30-11-222. Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R.C.M. 1921; Cal. Civ. C. Sec. 1777; Field Civ. C. Sec. 891; re-en. Sec. 7620, R.C.M. 1935; R.C.M. 1947, 74-323.

30-11-223. Effect of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware or which were then easily discernible by him without the exercise of peculiar skill, but it extends to all other defects.

History: En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R.C.M. 1921; Cal. Civ. C. Sec. 1778; Field Civ. C. Sec. 892; re-en. Sec. 7621, R.C.M. 1935; R.C.M. 1947, 74-324.

30-11-224. Uniform Commercial Code overrides. This part shall not apply to sales subject to the Uniform Commercial Code.

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963; R.C.M. 1947, 74-325.

Part 3

Merchant's Rights

30-11-301. Definitions. (1) The term "merchant" as used in this part shall mean an owner or operator and the agent, consignee, employee, lessee, or officer of an owner or operator of any merchant's premises.

(2) The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held, or offered for sale.

(3) The term "merchandise" shall mean any personal property capable of manual delivery displayed, held, or offered for sale by a merchant.

History: En. Sec. 1, Ch. 11, L. 1957; R.C.M. 1947, 64-212.

30-11-302. Obligation to keep merchandise in full view. Any merchant shall have the right to request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

History: En. Sec. 2, Ch. 11, L. 1957; R.C.M. 1947, 64-213.

Part 4

Commission Merchants

30-11-401. Commission merchants to acknowledge receipt of property. Any persons doing business in this state as commission merchants or who shall receive from any person of this state agricultural or horticultural products or farm produce raised in this state to sell on commission shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

History: En. Sec. 1, Ch. 2, L. 1909; re-en. Sec. 4183, R.C.M. 1921; re-en. Sec. 4183, R.C.M. 1935; R.C.M. 1947, 66-701.

30-11-402. Statement to consignor on sale of property. Whenever any commission merchant or person receiving any property as mentioned in the preceding section shall sell the same or 25% thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold, and the price received therefor.

History: En. Sec. 2, Ch. 2, L. 1909; re-en. Sec. 4184, R.C.M. 1921; re-en. Sec. 4184, R.C.M. 1935; R.C.M. 1947, 66-702.

30-11-403. Penalties for violation. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of 30-11-401 and 30-11-402 or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 2, L. 1909; re-en. Sec. 4185, R.C.M. 1921; re-en. Sec. 4185, R.C.M. 1935; R.C.M. 1947, 66-703.

Part 5

Auction Sales and Auctioneers

30-11-501. Sale by auction defined. A sale by auction is a sale by public outcry to the highest bidder on the spot.

History: En. Sec. 2410, Civ. C. 1895; re-en. Sec. 5122, Rev. C. 1907; re-en. Sec. 7625, R.C.M. 1921; Cal. Civ. C. Sec. 1792; Field Civ. C. Sec. 896; re-en. Sec. 7625, R.C.M. 1935; Sec. 66-213, R.C.M. 1947; redes. 74-701 by Sec. 1, Ch. 263, L. 1977; R.C.M. 1947, 74-701.

30-11-502. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods

at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale.

History: En. Sec. 2-328, Ch. 264, L. 1963; Sec. 87A-2-328, R.C.M. 1947; amd. and redes. 74-702 by Sec. 2, Ch. 263, L. 1977; R.C.M. 1947, 74-702.

30-11-503. Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for his own protection.

History: En. Sec. 2413, Civ. C. 1895; re-en. Sec. 5125, Rev. C. 1907; re-en. Sec. 7628, R.C.M. 1921; Cal. Civ. C. Sec. 1795; Field Civ. C. Sec. 899; re-en. Sec. 7628, R.C.M. 1935; Sec. 66-216, R.C.M. 1947; amd. and redes. 74-703 by Sec. 3, Ch. 263, L. 1977; R.C.M. 1947, 74-703.

30-11-504. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in his sale book at the time of the sale specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by themselves.

History: En. Sec. 2416, Civ. C. 1895; re-en. Sec. 5128, Rev. C. 1907; re-en. Sec. 7631, R.C.M. 1921; Cal. Civ. C. Sec. 1798; Field Civ. C. Sec. 902; re-en. Sec 7631, R.C.M. 1935; Sec. 66-219, R.C.M. 1947; amd. and redes. 74-704 by Sec. 4, Ch. 263, L. 1977; R.C.M. 1947, 74-704.

30-11-505. Book of sales. (1) Each auctioneer must keep a book and enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection by interested persons during normal business hours.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R.C.M. 1921; Cal. Pol. C. Sec. 3306; re-en. Sec. 4155, R.C.M. 1935; Sec. 66-211, R.C.M. 1947; amd. and redes. 74-705 by Sec. 5, Ch. 263, L. 1977; R.C.M. 1947, 74-705.

30-11-506. Auctioneer's authority from the seller. An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

(1) to sell by public auction to the highest bidder;
(2) to sell for cash only, except for articles usually sold on credit at auction;
(3) to warrant as an agent pursuant to 28-10-421;
(4) to prescribe reasonable rules and terms of sale;
(5) to deliver the thing sold upon payment of the price;
(6) to collect the price; and
(7) to do whatever else is necessary, proper, and usual in the ordinary course of business for effecting these purposes.

History: En. Sec. 3160, Civ. C. 1895; re-en. Sec. 5461, Rev. C. 1907; re-en. Sec. 7976, R.C.M. 1921; Cal. Civ. C. Sec. 2362; Field Civ. C. Sec. 1264; re-en. Sec. 7976, R.C.M. 1935; Sec. 66-201, R.C.M. 1947; amd. and redes. 74-706 by Sec. 6, Ch. 263, L. 1977; R.C.M. 1947, 74-706.

30-11-507. Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of sale as prescribed in 30-11-504.

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R.C.M. 1921; Cal. Civ. C. Sec. 2363; Field Civ. C. Sec. 1265; re-en. Sec. 7977,

R.C.M. 1935; amd. Sec. 11-145, Ch. 264, L. 1963; Sec. 66-202, R.C.M. 1947; amd. and redes. 74-707 by Sec. 7, Ch. 263, L. 1977; R.C.M. 1947, 74-707.

30-11-508. Auctioneer — authority and bond. Any citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R.C.M. 1921; Cal. Pol. C. Sec. 3284; re-en. Sec. 4147, R.C.M. 1935; Sec. 66-203, R.C.M. 1947; amd. and redes. 74-708 by Sec. 8, Ch. 263, L. 1977; R.C.M. 1947, 74-708.

30-11-509. Reciprocal privileges to nonresident auctioneers. The residency requirements required by this state for an auctioneer are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for the citizens of this state.

History: En. Sec. 1, Ch. 173, L. 1963; Sec. 66-203.1, R.C.M. 1947; amd. and redes. 74-709 by Sec. 9, Ch. 263, L. 1977; R.C.M. 1947, 74-709.

30-11-510. Bond and sureties — approval — filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of $5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in his office.

(2) If the auctioneer is not a resident, the bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R.C.M. 1921; Cal. Pol. C. Sec. 3285; re-en. Sec. 4148, R.C.M. 1935; amd. Sec. 2, Ch. 173, L. 1963; Sec. 66-204, R.C.M. 1947; amd. and redes. 74-710 by Sec. 10, Ch. 263, L. 1977; R.C.M. 1947, 74-710.

30-11-511. Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable thereof is ex officio auctioneer and is permitted to sell any property at public auction.

(2) He is liable on his official bond for any delinquency as the ex officio auctioneer.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R.C.M. 1921; Cal. Pol. C. Sec. 3291; re-en. Sec. 4149, R.C.M. 1935; amd. Sec. 7, Ch. 253, L. 1975; Sec. 66-205, R.C.M. 1947; amd. and redes. 74-711 by Sec. 11, Ch. 263, L. 1977; R.C.M. 1947, 74-711.

30-11-512. Assistant — who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ an agent or employee to hold the auction in his name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R.C.M. 1921; Cal. Pol. C. Sec. 3292; re-en. Sec. 4150, R.C.M. 1935; Sec. 66-206, R.C.M. 1947; amd. and redes. 74-712 by Sec. 12, Ch. 263, L. 1977; R.C.M. 1947, 74-712.

30-11-513. Auctioneers to designate one place of business — partners. (1) An auctioneer shall designate in writing with the county clerk one place at which he will conduct auctions within any city.

(2) He shall designate in the same document his partners, if any, in the business.

(3) He may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R.C.M. 1921; Cal. Pol. C. Sec. 3302; re-en. Sec. 4151, R.C.M. 1935; Sec. 66-207, R.C.M. 1947; amd. and redes. 74-713 by Sec. 13, Ch. 263, L. 1977; R.C.M. 1947, 74-713.

30-11-514. Penalty. A person convicted of violating a provision of this part shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition he shall be liable for damages incurred by any aggrieved party by reason of such violation.

History: En. 74-714 by Sec. 14, Ch. 263, L. 1977; R.C.M. 1947, 74-714.

30-11-515. Enforcement. The provisions of this part shall be enforced by the department of business regulation and the county attorney of the county in which the violation occurred.

History: En. 74-715 by Sec. 15, Ch. 263, L. 1977; R.C.M. 1947, 74-715.

30-11-516. Powers of cities and towns. Towns and cities may tax, license, and regulate persons, firms, associations, corporations, or other legal entities engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. Towns and cities may provide penalties for violations of the requirements.

History: En. Sec. 11, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959; Sec. 66-230, R.C.M. 1947; amd. and redes. 74-716 by Sec. 16, Ch. 263, L. 1977; R.C.M. 1947, 74-716.

Part 6

Factors

30-11-601. Factor defined. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him and is vested by the latter with the possession or control of the property or authorized to receive payment therefor from the purchaser.

History: En. Sec. 2750, Civ. C. 1895; re-en. Sec. 5290, Rev. C. 1907; re-en Sec. 7805, R.C.M. 1921; Cal. Civ. C. Sec. 2026; Based on Field Civ. C. Sec. 1045; re-en. 7805, R.C.M. 1935; R.C.M. 1947, 2-401.

30-11-602. Obedience required from factor. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee.

History: En. Sec. 2751, Civ. C. 1895; re-en. Sec. 5291, Rev. C. 1907; re-en Sec. 7806, R.C.M. 1921; Cal. Civ. C. Sec. 2027; Based on Field Civ. C. Sec. 1046; re-en. 7806, R.C.M. 1935; R.C.M. 1947, 2-402.

30-11-603. Sales on credit. A factor may sell property consigned to him on such credit as is usual but, having once agreed with the purchaser upon the terms of credit, may not extend it.

History: En. Sec. 2752, Civ. C. 1895; re-en. Sec. 5292, Rev. C. 1907; re-en Sec. 7807, R.C.M. 1921; Cal. Civ. C. Sec. 2028; Based on Field Civ. C. Sec. 1047; re-en. 7807, R.C.M. 1935; R.C.M. 1947, 2-403.

30-11-604. Liability of factor under guaranty commission. A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due as if it were a debt of his own and not as a mere guarantor for the purchaser. He does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

History: En. Sec. 2753, Civ. C. 1895; re-en. Sec. 5293, Rev. C. 1907; re-en Sec. 7808, R.C.M. 1921; Cal. Civ. C. Sec. 2029; Based on Field Civ. C. Sec. 1048; re-en. 7808, R.C.M. 1935; R.C.M. 1947, 2-404.

30-11-605. Principal's consent needed to relieve factor from liability. A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal.

History: En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en Sec. 7809, R.C.M. 1921; Cal. Civ. C. Sec. 2030; Based on Field Civ. C. Sec. 1049; re-en. 7809, R.C.M. 1935; R.C.M. 1947, 2-405.

30-11-606. Authority of factor. In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted, to:

(1) insure property consigned to him uninsured;

(2) sell on credit anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the same; and

(3) delegate his authority to his partner or servant but not to any person in an independent employment.

History: En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en Sec. 7979, R.C.M. 1921; Cal. Civ. C. Sec. 2368; Field Civ. C. Sec. 1267; re-en. 7979, R.C.M. 1935; R.C.M. 1947, 2-406.

30-11-607. Ostensible authority. A factor has ostensible authority to deal with the property of his principal as his own in transactions with persons not having notice of the actual ownership.

History: En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en Sec. 7980, R.C.M. 1921; Cal. Civ. C. Sec. 2369; Field Civ. C. Sec. 1268; re-en. 7980, R.C.M. 1935; R.C.M. 1947, 2-407.

CHAPTER 12

WEIGHTS, MEASURES, STANDARDS, AND LABELING

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Part 1

General Provisions

30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(2) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(3) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(4) "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(5) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(6) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(7) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(8) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(9) "Sell" and "sale" include but are not limited to barter and exchange.

(10) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(11) "Weight", when used in connection with any commodity, means net weight.

(12) "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. None of the provisions of parts 1 through 5 apply to electricity, gas, or water meters

operated in a public utility system or to any appliances or accessories associated with them.

History: En. Sec. 1, Ch. 99, L. 1969; amd. Sec. 146, Ch. 431, L. 1975; R.C.M. 1947, 90-153.

30-12-102. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969; R.C.M. 1947, 90-154.

30-12-103. State standards of weight and measure. Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards shall, when they have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the department. They shall not be removed from there except for repairs or for certification, and they shall be submitted at least once in 10 years to the national bureau of standards for certification.

History: En. Sec. 4, Ch. 99, L. 1969; amd. Sec. 147, Ch. 431, L. 1975; R.C.M. 1947, 90-156.

30-12-104. Field standards and equipment. In addition to the state standards provided for in 30-12-103, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of parts 1 through 5 of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969; R.C.M. 1947, 90-157.

Part 2

Authority of Department of Business Regulation

30-12-201. General powers and duties of department. The department shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures offered for sale, sold, or in use in this state.

History: En. Sec. 7, Ch. 99, L. 1969; amd. Sec. 148, Ch. 431, L. 1975; R.C.M. 1947, 90-159.

30-12-202. Specific powers and duties of department — rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, which rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of servicemen and service agencies.

(2) These rules shall include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except insofar as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus shall be considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus shall be considered to be "incorrect".

History: En. Sec. 8, Ch. 99, L. 1969; amd. Sec. 149, Ch. 431, L. 1975; R.C.M. 1947, 90-160.

30-12-203. Licensing of weighing devices. (1) No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity.

(2) Such license shall be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license should include at least one inspection per year.

(3) Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	$ 2.50
500 pounds through 1,999 pounds	4.00
2,000 pounds through 7,999 pounds	10.00
8,000 pounds through 40,000 pounds	20.00
40,001 pounds or more	35.00

(4) The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

(5) All licenses shall be annual and shall expire on December 31.

(6) Any person failing to pay the renewal license fee when due as required by this section shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973; R.C.M. 1947, 90-160.1.

30-12-204. Testing at state-supported institutions. The department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings in writing to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969; amd. Sec. 150, Ch. 431, L. 1975; R.C.M. 1947, 90-161.

30-12-205. General testing. (1) When not otherwise provided by law, the department may inspect and test to ascertain if they are correct all weights and measures kept, offered, or exposed for sale.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or of count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register his name and address with the department, in order that his equipment can be tested in accordance with the provisions of this law.

History: En. Sec. 10, Ch. 99, L. 1969; amd. Sec. 151, Ch. 431, L. 1975; R.C.M. 1947, 90-162.

30-12-206. Investigations. The department shall investigate complaints made to it concerning violations of parts 1 through 5. It shall, upon its own initiative, conduct those investigations it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of parts 1 through 5 and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: En. Sec. 11, Ch. 99, L. 1969; amd. Sec. 152, Ch. 431, L. 1975; R.C.M. 1947, 90-163.

30-12-207. Inspection of packages. (1) The department shall from time to time weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot.

(2) A person may not:

(a) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(b) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department.

History: En. Sec. 12, Ch. 99, L. 1969; amd. Sec. 153, Ch. 431, L. 1975; R.C.M. 1947, 90-164.

30-12-208. Stop-use, stop-removal, and removal orders. The department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being or susceptible of being commercially used and issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery whenever in the course of enforcement of parts 1 through 5 it considers it necessary or expedient to issue those orders. A person may not use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section.

History: En. Sec. 13, Ch. 99, L. 1969; amd. Sec. 154, Ch. 431, L. 1975; R.C.M. 1947, 90-165.

30-12-209. Disposition of correct and incorrect apparatus. (1) The department shall approve for use and seal or mark with appropriate devices those weights and measures which it finds upon inspection and test to be "correct" as defined in 30-12-202 and shall reject and mark or tag as "rejected" those weights and measures which it finds, upon inspection or test, to be "incorrect" as defined in 30-12-202 but which in its best judgment are susceptible of satisfactory repair.

(2) The department shall condemn, and may seize and destroy, weights and measures found to be incorrect which, in its best judgment, are not susceptible of satisfactory repair.

(3) Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by 30-12-211 or if used or disposed of contrary to the requirements of 30-12-211.

(4) Sealing or marking are not required with respect to those weights and measures which may be exempted therefrom by a rule of the department issued under 30-12-202.

History: En. Sec. 14, Ch. 99, L. 1969; amd. Sec. 155, Ch. 431, L. 1975; R.C.M. 1947, 90-166.

30-12-210. Police powers. In enforcing the provisions of parts 1 through 5 or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.

History: En. Sec. 15, Ch. 99, L. 1969; amd. Sec. 156, Ch. 431, L. 1975; R.C.M. 1947, 90-167.

30-12-211. Duty of owners of incorrect apparatus. (1) Weights and measures that have been rejected under the authority of the department shall remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period as may be authorized by the department.

(3) In place of this, the owner may dispose of them, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct, or until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures servicemen and service agencies.

History: En. Sec. 17, Ch. 99, L. 1969; amd. Sec. 157, Ch. 431, L. 1975; R.C.M. 1947, 90-169.

Part 3

Method of Sale of Commodities

30-12-301. Method of sale of commodities — general. (1) Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply to:

(a) commodities when sold for immediate consumption on the premises where sold;

(b) vegetables when sold by the head or bunch;

(c) commodities in containers standardized by a law of this state or by federal law;

(d) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) unprocessed vegetable and animal fertilizer when sold by cubic measure.

(2) The department may adopt reasonable rules necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 18, Ch. 99, L. 1969; amd. Sec. 158, Ch. 431, L. 1975; R.C.M. 1947, 90-170.

30-12-302. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions. (1) Except as otherwise provided in parts 1 through 5, a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package definite, plain, and conspicuous declarations of:

(a) the identity of the commodity in the package unless it can easily be identified through the wrapper or container;

(b) the net quantity of the contents in terms of weight, measure, or count; and

(c) in the case of any package kept, offered, or exposed for sale or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the department.

(2) In connection with the declaration required under subsection (1)(b), neither the qualifying term "when packed" nor words of similar import nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection (1)(b), the department shall by rule establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure;

(b) exemptions as to small packages; and

(c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits sold in conformance with part 4.

History: En. Sec. 19, Ch. 99, L. 1969; amd. Sec. 159, Ch. 431, L. 1975; R.C.M. 1947, 90-171.

30-12-303. Declarations of unit price on random packages. In addition to the declarations required by 30-12-302, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 20, Ch. 99, L. 1969; R.C.M. 1947, 90-172.

30-12-304. Misleading packages. A commodity in package form may not be wrapped or in a container made, formed, or filled so as to mislead the purchaser as to the quantity of the contents of the package. The contents of a container may not fall below a reasonable standard of fill which may be prescribed for that commodity by the department.

History: En. Sec. 21, Ch. 99, L. 1969; amd. Sec. 160, Ch. 431, L. 1975; R.C.M. 1947, 90-173.

30-12-305. Advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as required by law or regulation to appear on the package, provided:

(1) that where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement; and

(2) that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed", "minimum", "not less than",

or any other terms of similar import or any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 22, Ch. 99, L. 1969; R.C.M. 1947, 90-174.

30-12-306. Sale by net weight. When a commodity is sold on the basis of weight, the net weight of the commodity shall be employed and all contracts concerning commodities shall be so construed.

History: En. Sec. 23, Ch. 99, L. 1969; amd. Sec. 161, Ch. 431, L. 1975; R.C.M. 1947, 90-175.

30-12-307. Misrepresentation of price. Whenever any commodity or service is sold or is offered, exposed, or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents.

History: En. Sec. 24, Ch. 99, L. 1969; R.C.M. 1947, 90-176.

Part 4

Sale of Specific Commodities

30-12-401. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood, except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight and the quantity representation may be the total weight of the product or combination and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 25, Ch. 99, L. 1969; R.C.M. 1947, 90-177.

30-12-402. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread produced or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh ½ pound, 1 pound, 1 ½ pounds, or a multiple of 1 pound, avoirdupois weight, within reasonable variations or tolerances that shall be adopted by rules of the department. This section does not apply to biscuits, buns, or rolls weighing 8 ounces or less or to "stale bread" sold and expressly represented at the time of sale as such.

History: En. Sec. 26, Ch. 99, L. 1969; amd. Sec. 162, Ch. 431, L. 1975; R.C.M. 1947, 90-178.

30-12-403. Butter, oleomargarine, and margarine. Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight and only in units of ¼ pound, ½ pound, 1 pound, or multiples of 1 pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969; R.C.M. 1947, 90-179.

30-12-404. Fluid dairy products. All fluid dairy products including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk shall be packaged for retail sale only in units of less than 1 gill, units of 1 gill, ½ liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, ½ gallon, 3 liquid quarts, 1 gallon, 1 ½ gallons, 2 gallons, 2 ½ gallons, or multiples of 1 gallon.

History: En. Sec. 28, Ch. 99, L. 1969; amd. Sec. 1, Ch. 76, L. 1977; R.C.M. 1947, 90-180.

30-12-405. Flour, cornmeal, and hominy grits. When in package form and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, cornmeal, and hominy grits shall be packaged only in units of 2, 5, 10, 25, 50, or 100 pounds, avoirdupois weight. Packages in units of less than 2 pounds or more than 100 pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969; R.C.M. 1947, 90-181.

30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;
(b) the name and address of the purchaser; and
(c) the net weight of the delivery expressed in pounds.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity or shall be surrendered on demand to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969; amd. Sec. 163, Ch. 431, L. 1975; R.C.M. 1947, 90-182.

30-12-407. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of 30-12-301. In the case of each delivery of such liquid fuel not in package form and in an amount greater than 10 gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and in clarity equal to type or printing, there shall be clearly stated:

(1) the name and address of the vendor;
(2) the name and address of the purchaser;

(3) the identity of the type of fuel comprising the delivery;

(4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered;

(5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: En. Sec. 31, Ch. 99, L. 1969; R.C.M. 1947, 90-183.

30-12-408. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of ½ dry pint, 1 dry pint, or 1 dry quart.

History: En. Sec. 32, Ch. 99, L. 1969; amd. Sec. 164, Ch. 431, L. 1975; R.C.M. 1947, 90-184.

30-12-409. Sale of gasoline and distillates on other than gross volume basis unlawful. The sale of gasoline and distillates on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

History: En. 13-812 by Sec. 1, Ch. 198, L. 1975; amd. Sec. 1, Ch. 274, L. 1977; R.C.M. 1947, 13-812.

Part 5

Offenses and Penalties

30-12-501. Construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in 30-12-101 and 30-12-102, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969; R.C.M. 1947, 90-185.

30-12-502. Hindering or obstructing officer — penalties. A person who hinders or obstructs the department in any way in the performance of its official duties is guilty of a misdemeanor and upon conviction shall be fined not less than $20 or more than $200 or imprisoned not more than 3 months or both fined and imprisoned.

History: En. Sec. 34, Ch. 99, L. 1969; amd. Sec. 165, Ch. 431, L. 1975; R.C.M. 1947, 90-186.

30-12-503. Impersonation of officer — penalties. A person who in any way impersonates a person charged with enforcement of parts 1 through 5 by the department, by the use of its seal or a counterfeit of its seal or in any other manner, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 35, Ch. 99, L. 1969; amd. Sec. 166, Ch. 431, L. 1975; R.C.M. 1947, 90-187.

30-12-504. Offenses and penalties. (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209, unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 must report to the department, in writing, the number and location of the weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity he represents of a commodity, thing, or service;

(f) take more than the quantity he represents of a commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than $20 or more than $200 or imprisoned for not more than 3 months or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than $50 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 36, Ch. 99, L. 1969; amd. Sec. 167, Ch. 431, L. 1975; R.C.M. 1947, 90-188.

30-12-505. Injunction. The department may apply to any court of competent jurisdiction for, and that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining a person from violating any provision of parts 1 through 5 of this chapter.

History: En. Sec. 37, Ch. 99, L. 1969; amd. Sec. 168, Ch. 431, L. 1975; R.C.M. 1947, 90-189.

30-12-506. Presumptive evidence. For the purposes of parts 1 through 5, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on is, in the absence of credible evidence to the contrary, presumptive proof of the regular use of that weight or measure or weighing or measuring device for commercial purposes and of the use by the person in charge of the building, enclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1969; amd. Sec. 169, Ch. 431, L. 1975; R.C.M. 1947, 90-190.

30-12-507. Validity of prosecutions. Prosecutions for violation of any provision of parts 1 through 5 are declared to be valid and proper, notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by parts 1 through 5.

History: En. Sec. 39, Ch. 99, L. 1969; R.C.M. 1947, 90-191.

Part 6

Money of Account

30-12-601. Money of account. The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907; re-en. Sec. 4283, R.C.M. 1921; Cal. Pol. C. Sec. 3272; re-en. Sec. 4283, R.C.M. 1935; R.C.M. 1947, 90-501.

30-12-602. Limitation. The provisions of 30-12-601 do not vitiate or affect any account, charge, or entry originally made or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907; re-en. Sec. 4284, R.C.M. 1921; Cal. Pol. C. Sec. 3273; re-en. Sec. 4284, R.C.M. 1935; R.C.M. 1947, 90-502.

Parts 7 through 9 reserved

Part 10

Paints — Labeling

30-12-1001. Paints — label — contents of label. A person, firm, or corporation who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coating, or additive for wood, metal, concrete, or roof coating, but excluding artists' colors, waxes, and polishes, shall label it in a clear and distinct manner. The label shall recite a full analysis of the content with a specification of pigment and vehicle, including the analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition may be inspected by the chief chemist of a laboratory designated by the department of business regulation.

History: En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R.C.M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974; R.C.M. 1947, 90-701.

30-12-1002. Enforcement of part. The department of business regulation shall enforce this part. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in 30-12-1001. The department may purchase and open any package, can, jar, tub, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection.

History: En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R.C.M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974; R.C.M. 1947, 90-702.

30-12-1003. Designation of laboratory for analysis. The department of business regulation shall designate the laboratory where analysis of the products described in 30-12-1001 shall be made. When products are found to be in violation of this part, the chief chemist of the laboratory designated by the department shall report the facts to the department. A certificate signed by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in 30-12-1001 is presumptive evidence of the facts stated in it.

History: En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R.C.M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974; R.C.M. 1947, 90-703.

30-12-1004. County attorney duties. The county attorney of the county where the violation of this part occurred shall prosecute every person, firm, or corporation violating this part when the evidence of the violation has been presented by the chief chemist of the laboratory making the analysis.

History: En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R.C.M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974; R.C.M. 1947, 90-704.

30-12-1005. Possession as evidence. The possession, either constructive or actual, by a person, firm, or corporation dealing in the articles or substances described in 30-12-1001 and not properly labeled as provided by 30-12-1001 is prima facie evidence that those articles or substances are kept for sale in violation of this part.

History: En. Sec. 3, Ch. 69, L. 1959; Sec. 3-1512, R.C.M. 1947; amd. and redes. 90-705 by Sec. 82, Ch. 218, L. 1974; R.C.M. 1947, 90-705.

30-12-1006. Penalty for violations. A person, firm, or corporation who violates this part shall be prosecuted and fined not less than $25 or more than $100 and all costs, including cost of analysis to the amount of $25, or shall be imprisoned in the county jail for not more than 60 days.

History: En. Sec. 2, Ch. 69, L. 1959; Sec. 3-1511, R.C.M. 1947; amd. and redes. 90-706 by Sec. 81, Ch. 218, L. 1974; R.C.M. 1947, 90-706.

CHAPTER 13

TRADEMARKS AND RELATED RIGHTS

Part 1 — Trademarks and Related Rights

Section
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Part 1

Trademarks and Related Rights

30-13-101. Trademark defined. The phrase "trademark", as used in this chapter, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description, or the designation or name for any mill, hotel, factory, or other business.

History: En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907; re-en. Sec. 4286, R.C.M. 1921; Cal. Pol. C. Sec. 3196; re-en. Sec. 4286, R.C.M. 1935; R.C.M. 1947, 85-101.

30-13-102. Trademarks and signs. One who produces or deals in a particular thing or conducts a particular business may appropriate to his exclusive use as a trademark any form, symbol, or name which has not been so appropriated by another to designate the origin or ownership thereof. But he cannot exclusively appropriate any designation or part of a designation which relates only to the name, quality, or description of the thing or business or the place where the thing is produced or the business is carried on.

History: En. Sec. 1370, Civ. C. 1895; re-en. Sec. 4565, Rev. C. 1907; re-en. Sec. 6812, R.C.M. 1921; Cal. Civ. C. Sec. 991; Based on Field Civ. C. Sec. 435; re-en. Sec. 6812, R.C.M. 1935; R.C.M. 1947, 67-1110.

30-13-103. Recording of trademark. Any person may record any trademark or name by filing with the secretary of state his claim to the same and a copy or description of such trademark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgments of conveyances, setting forth that he or the firm or corporation of which he is a member is the exclusive owner, or agent of the owner, of such trademark or name.

History: **En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907; re-en. Sec. 4287, R.C.M. 1921; Cal. Pol. C. Sec. 3197; re-en. Sec. 4287, R.C.M. 1935; R.C.M. 1947, 85-102.**

30-13-104. Record of trademarks or names — fee. The secretary of state must keep for public examination a record of all trademarks or names filed in his office, with the date when filed and the name of the claimant, and must not record any two like trademarks or names; provided, however, that in the event that an affidavit, attested by two witnesses, is filed in the office of the secretary of state to the effect that any trademark or name recorded therein in the name of any person or persons, corporation, or association has not been used by such person or persons, corporation, or association, their successors or assigns, for a period of 5 years immediately preceding the filing of said affidavit, then and in that event the secretary of state is authorized, empowered, and directed to record said trademark or name in the name of the person making application therefor in said affidavit or in the name of the person or persons, corporation, or association for whose benefit said application and affidavit are made, but without prejudice to any person claiming to be injured thereby to contest the same in any court of competent jurisdiction within a period of 6 months thereafter. He must, at the time of filing and recording a trademark or name, collect from the claimant the fee set forth in 2-6-103.

History: **En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rev. C. 1907; re-en. Sec. 4288, R.C.M. 1921; Cal. Pol. C. Sec. 3198; amd. Sec. 1, Ch. 68, L. 1931; re-en. Sec. 4288, R.C.M. 1935; amd. Sec. 16, Ch. 117, L. 1961; R.C.M. 1947, 85-103.**

30-13-105. Ownership and transfer of trademarks. Any person who has first adopted and used a trademark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property and is entitled to the same protection by suits at law. Any court of competent jurisdiction may restrain by injunction any use of trademarks or names in violation of this chapter.

History: **En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907; re-en. Sec. 4289, R.C.M. 1921; Cal. Pol. C. Sec. 3199; re-en. Sec. 4289, R.C.M. 1935; R.C.M. 1947, 85-104.**

30-13-106. Trademarks for beverage container marks. Any person engaged in manufacturing, bottling, or selling soda, mineral, or aerated waters, cider, ginger ale, or other aerated, nonintoxicating beverages in bottles or siphons with his name or other marks or devices branded, stamped, engraved, etched, blown, impressed, or otherwise produced upon such bottles or siphons or the boxes used by him may have a trademark for the same as provided in this chapter.

History: **En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907; re-en. Sec. 4291, R.C.M. 1921; re-en. Sec. 4291, R.C.M. 1935; R.C.M. 1947, 85-106.**

30-13-107. Penalties. (1) The penalty for forging, counterfeiting, or unlawful using of trademarks is as provided in 45-6-318 or 45-6-325, whichever is applicable.

(2) Every person who violates the provisions of 30-13-106 is punishable as provided in 45-6-318 and 45-6-325.

History: **(1)En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R.C.M. 1921; re-en. Sec. 4290, R.C.M. 1935; amd. Sec. 22, Ch. 513, L. 1973; amd. Sec. 6, Ch. 265, L. 1977; Sec. 85-105, R.C.M. 1947; (2)En. Sec. 3301,**

Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R.C.M. 1921; re-en. Sec. 4292, R.C.M. 1935; amd. Sec. 7, Ch. 265, L. 1977; Sec. 85-107, R.C.M. 1947; R.C.M. 1947, 85-105, 85-107.

30-13-108 through 30-13-110 reserved.

30-13-111. Certificate of individual using fictitious name in business. Every individual now transacting business or who may hereafter transact business in this state under a fictitious name or a style or designation purporting to be a firm name or corporate name shall file and publish or cause to be filed and published the certificates described in Title 35, chapter 11, part 1. Anyone doing business contrary to the provisions of this section shall be subject to the disabilities and provisions of 35-11-102.

History: En. Sec. 3285, Civ. C. 1895; re-en. Sec. 5509, Rev. C. 1907; re-en. Sec. 8024, R.C.M. 1921; re-en. Sec. 8024, R.C.M. 1935; R.C.M. 1947, 63-606.

30-13-112. Registration of ranch owners. The owner of any farm or ranch in the state of Montana may, upon the payment of $1 to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be furnished a certificate by said clerk and recorder issued under the seal of said official, setting forth therein the name and location of the farm or ranch, and the name of such owner. When any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county, except by prefixing or adding thereto designating or other identifying words.

History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R.C.M. 1921; re-en. Sec. 6897, R.C.M. 1935; R.C.M. 1947, 73-109.

30-13-113 through 30-13-120 reserved.

30-13-121. Goodwill of business. The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

History: En. Sec. 1371, Civ. C. 1895; re-en. Sec. 4566, Rev. C. 1907; re-en. Sec. 6813, R.C.M. 1921; Cal. Civ. C. Sec. 992; Field Civ. C. Sec. 436; re-en. Sec. 6813, R.C.M. 1935; R.C.M. 1947, 67-1111.

30-13-122. Goodwill transferable. The goodwill of a business is property, transferable like any other.

History: En. Sec. 1372, Civ. C. 1895; re-en. Sec. 4567, Rev. C. 1907; re-en. Sec. 6814, R.C.M. 1921; Cal. Civ. C. Sec. 993; Field Civ. C. Sec. 437; re-en. Sec. 6814, R.C.M. 1935; R.C.M. 1947, 67-1112.

30-13-123 through 30-13-130 reserved.

30-13-131. Product of the mind — ownership. The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership therein and in the representation or expression thereof which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

History: En. Sec. 1360, Civ. C. 1895; re-en. Sec. 4559, Rev. C. 1907; re-en. Sec. 6806, R.C.M. 1921; Cal. Civ. C. Sec. 980; Field Civ. C. Sec. 429; re-en. Sec. 6806, R.C.M. 1935; R.C.M. 1947, 67-1104.

30-13-132. Joint authorship. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

(1) if the product is single, in equal proportions;
(2) if it is not single, in proportion to the contribution of each.

History: En. Sec. 1361, Civ. C. 1895; re-en. Sec. 4560, Rev. C. 1907; re-en. Sec. 6807, R.C.M. 1921; Cal. Civ. C. Sec. 981; Field Civ. C. Sec. 430; re-en. Sec. 6807, R.C.M. 1935; R.C.M. 1947, 67-1105.

30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his property in the same.

History: En. Sec. 1362, Civ. C. 1895; re-en. Sec. 4561, Rev. C. 1907; re-en. Sec. 6808, R.C.M. 1921; Cal. Civ. C. Sec. 982; Field Civ. C. Sec. 431; re-en. Sec. 6808, R.C.M. 1935; R.C.M. 1947, 67-1106.

30-13-134. Effect of publication. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person without responsibility to the owner, so far as the law of this state is concerned.

History: En. Sec. 1363, Civ. C. 1895; re-en. Sec. 4562, Rev. C. 1907; re-en. Sec. 6809, R.C.M. 1921; Cal. Civ. C. Sec. 983; Field Civ. C. Sec. 432; re-en. Sec. 6809, R.C.M. 1935; R.C.M. 1947, 67-1107.

30-13-135. Subsequent inventor or author. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under him.

History: En. Sec. 1364, Civ. C. 1895; re-en. Sec. 4563, Rev. C. 1907; re-en. Sec. 6810, R.C.M. 1921; Cal. Civ. C. Sec. 984; Field Civ. C. Sec. 433; re-en. Sec. 6810, R.C.M. 1935; R.C.M. 1947, 67-1108.

30-13-136. Private writings. Letters and other private communications in writing belong to the person to whom they are addressed and delivered, but they cannot be published against the will of the writer except by authority of law.

History: En. Sec. 1365, Civ. C. 1895; re-en. Sec. 4564, Rev. C. 1907; re-en. Sec. 6811, R.C.M. 1921; Cal. Civ. C. Sec. 985; Field Civ. C. Sec. 434; re-en. Sec. 6811, R.C.M. 1935; R.C.M. 1947, 67-1109.

30-13-137 through 30-13-140 reserved.

30-13-141. Definitions. As used in 30-13-141 through 30-13-147, the following definitions apply:

(1) "Person" means any individual, firm, partnership, corporation, or association.

(2) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(3) "Performer" means the person or persons appearing in a performance.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

History: En. Sec. 1, Ch. 367, L. 1977; R.C.M. 1947, 85-601.

30-13-142. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. Sec. 2, Ch. 367, L. 1977; R.C.M. 1947, 85-602.

30-13-143. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 3, Ch. 367, L. 1977; R.C.M. 1947, 85-603.

30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited. (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 4, Ch. 367, L. 1977; R.C.M. 1947, 85-604.

30-13-145. Forfeiture. Any article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

History: En. Sec. 5, Ch. 367, L. 1977; R.C.M. 1947, 85-605.

30-13-146. Exceptions. Sections 30-13-141 through 30-13-147 do not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

History: En. Sec. 6, Ch. 367, L. 1977; R.C.M. 1947, 85-606.

30-13-147. Civil litigation. Sections 30-13-141 through 30-13-147 neither enlarge nor diminish the rights of parties in civil litigation.

History: En. Sec. 7, Ch. 367, L. 1977; R.C.M. 1947, 85-607.

CHAPTER 14

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

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Part 1

Consumer Protection Act

30-14-101. Short title. This part shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973".

History: En. Sec. 19, Ch. 275, L. 1973; R.C.M. 1947, 85-418.

30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of business regulation created in 2-15-1801.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material includes the inspection, study, or copying of such material and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

History: En. Sec. 1, Ch. 275, L. 1973; R.C.M. 1947, 85-401.

30-14-103. Unlawful practices. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973; R.C.M. 1947, 85-402.

30-14-104. Federal interpretation — rules determining unfair competition and deception. (1) It is the intent of the legislature that in construing 30-14-103 due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

(2) The department may make rules interpreting the provisions of 30-14-103. Such rules shall not be inconsistent with the rules, regulations, and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

History: En. Sec. 3, Ch. 275, L. 1973; R.C.M. 1947, 85-403.

30-14-105. Exemptions. Nothing in this part shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this part or the United States;

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service;

(3) national advertising.

History: En. Sec. 4, Ch. 275, L. 1973; R.C.M. 1947, 85-404.

30-14-106 through 30-14-110 reserved.

30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act, or practice, upon the giving of appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-134 at least 20 days before the hearing of the action.

(3) The action may be brought in the district court in which such person resides or has his principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.

(4) The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this part, and such injunctions shall be issued without bond.

History: En. Sec. 5, Ch. 275, L. 1973; R.C.M. 1947, 85-405.

30-14-112. Assurance of compliance. In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be violative of this part from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111.

History: En. Sec. 9, Ch. 275, L. 1973; amd. Sec. 10, Ch. 265, L. 1977; R.C.M. 1947, 85-409.

30-14-113. Investigative demand. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge or to appear and testify or produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

History: En. Sec. 10, Ch. 275, L. 1973; amd. Sec. 11, Ch. 265, L. 1977; R.C.M. 1947, 85-410.

30-14-114. Department authority. To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and promulgate rules as may be necessary, which rules shall have the force of law; provided that none of the powers conferred by this part may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: En. Sec. 11, Ch. 275, L. 1973; R.C.M. 1947, 85-411.

30-14-115. Service of process — how made. Service of any notice, demand, or subpoena under this part shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 275, L. 1973; R.C.M. 1947, 85-412.

30-14-116 through 30-14-120 reserved.

30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney or the attorney general, on request of the department or a county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone or the attorney general on request of the county attorney, the person prosecuting shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney or attorney general shall make a report thereon to the department within 30 days of the final disposition of the matter.

History: En. Sec. 16, Ch. 275, L. 1973; amd. Sec. 1, Ch. 407, L. 1977; R.C.M. 1947, 85-416.

30-14-122. Employment of investigator by county attorney. The county attorney in first- and second-class counties may designate an employee to act as a full-time investigator.

History: En. Sec. 17, Ch. 275, L. 1973; R.C.M. 1947, 85-417.

30-14-123 through 30-14-130 reserved.

30-14-131. Restoration. The court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: En. Sec. 6, Ch. 275, L. 1973; R.C.M. 1947, 85-406.

30-14-132. Powers of receiver — proof of damages — jurisdiction. (1) When a receiver is appointed by the court pursuant to this part, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that he has in fact been damaged may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: En. Sec. 7, Ch. 275, L. 1973; amd. Sec. 8, Ch. 265, L. 1977; R.C.M. 1947, 85-407.

30-14-133. Damages — notice to public agencies — attorney fees — prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business to recover actual damages or $200, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained and may provide such equitable relief as it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103.

History: En. Sec. 8, Ch. 275, L. 1973; amd. Sec. 9, Ch. 265, L. 1977; R.C.M. 1947, 85-408.

30-14-134. Enforcement of department orders — contempt. If any person fails or refuses to file any statement or report or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state; revoking or suspending the certificate of authority to do business in this state of a foreign corporation; or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required until the person files the statement or report or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973; R.C.M. 1947, 85-413.

30-14-135 through 30-14-140 reserved.

30-14-141. Dissolution or forfeiture of corporate franchise. Upon petition by the department, the district court may, in its discretion, order the dissolution, suspension, or forfeiture of franchise of any corporation which violates the terms of any injunction issued under 30-14-111.

History: En. Sec. 15, Ch. 275, L. 1973; R.C.M. 1947, 85-415.

30-14-142. Penalties. (1) Any person who violates the terms of an injunction issued under 30-14-111 shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103.

History: En. Sec. 14, Ch. 275, L. 1973; R.C.M. 1947, 85-414.

Part 2

Unfair Trade Practices

30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part shall be literally construed so that its beneficial purposes may be subserved.

History: En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R.C.M. 1947; amd. and redes. 51-501 by Sec. 1, Ch. 518, L. 1977; R.C.M. 1947, 51-501.

30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

(2) "Business" includes any person, as defined in (8), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost", as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the arti-

cle or product, whichever is lesser, less all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(5) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and officers);
(b) rent;
(c) interest on borrowed capital;
(d) depreciation;
(e) selling cost;
(f) maintenance of equipment;
(g) delivery costs;
(h) credit losses;
(i) all types of licenses;
(j) taxes;
(k) insurance and advertising.

(6) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(7) "Department" means the department of business regulation provided for in 2-15-1801.

(8) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(9) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

History: En. 51-502 by Sec. 2, Ch. 518, L. 1977; R.C.M. 1947, 51-502.

30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any firm or corporation or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible therefor equally with the person, firm, or corporation for whom or which he acts.

History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R.C.M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977; R.C.M. 1947, 51-503.

30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

History: En. 51-504 by Sec. 4, Ch. 518, L. 1977; R.C.M. 1947, 51-504.

30-14-205. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;
(b) increase or reduce the price of merchandise or commodities;
(c) prevent competition in the distribution or sale of merchandise or commodities;
(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;
(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;
(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;
(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

History: En. 51-505 by Sec. 5, Ch. 518, L. 1977; R.C.M. 1947, 51-505.

30-14-206. Labor excepted. The provisions of 30-14-205 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R.C.M. 1921; re-en. Sec. 10902, R.C.M. 1935; Sec. 94-1105, R.C.M. 1947; redes. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-506 by Sec. 6, Ch. 518, L. 1977; R.C.M. 1947, 51-506.

30-14-207. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.
(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.
(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.
(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

History: En. 51-507 by Sec. 7, Ch. 518, L. 1977; R.C.M. 1947, 51-507.

30-14-208. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer, discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.
(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

History: En. 51-508 by Sec. 8, Ch. 518, L. 1977; R.C.M. 1947, 51-508.

30-14-209. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

History: En. 51-509 by Sec. 9, Ch. 518, L. 1977; R.C.M. 1947, 51-509.

30-14-210. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

History: En. 51-510 by Sec. 10, Ch. 518, L. 1977; R.C.M. 1947, 51-510.

30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may require by rule. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey.

History: En. Sec. 12A, Ch. 80, L. 1937, added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949; amd. Sec. 122, Ch. 431, L.

1975; Sec. 51-114, R.C.M. 1947; amd. and redes. 51-511 by Sec. 11, Ch. 518, L. 1977; R.C.M. 1947, 51-511.

30-14-212. Forced sales not basis of cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of sale of the article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale or by means other than through the ordinary channels of trade and such advertising states the conditions under which the goods were purchased and the quantity of merchandise to be sold or offered for sale.

History: En. Sec. 4, Ch. 80, L. 1937; Sec. 51-104, R.C.M. 1947; amd. and redes. 51-512 by Sec. 12, Ch. 518, L. 1977; R.C.M. 1947, 51-512.

30-14-213. Sales excepted. Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions.

History: En. Sec. 6, Ch. 80, L. 1937; amd. Sec. 1, Ch. 100, L. 1941; Sec. 51-107, R.C.M. 1947; amd. and redes. 51-513 by Sec. 13, Ch. 518, L. 1977; R.C.M. 1947, 51-513.

30-14-214. Fair price for agricultural products. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this part.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. An organization representing consumers may not be denied representation at the hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this part for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price

established by the department. Such action is punishable under the terms provided in this part.

History: En. Sec. 5-A, Ch. 80, L. 1937; amd. Sec. 120, Ch. 431, L. 1975; Sec. 51-106, R.C.M. 1947; amd. and redes. 51-514 by Sec. 14, Ch. 518, L. 1977; R.C.M. 1947, 51-514.

30-14-215. Rebates forbidden. (1) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and when such payment or allowance tends to destroy competition, is an unfair trade practice, and any person resorting to such trade practice is guilty of a misdemeanor and on conviction is subject to the penalties set out in 30-14-224.

(2) However, nothing in this section prevents a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations in proportion to their purchases or sales from, to, or through the association.

History: En. Sec. 7, Ch. 80, L. 1937; Sec. 51-108, R.C.M. 1947; amd. and redes. 51-515 by Sec. 15, Ch. 518, L. 1977; R.C.M. 1947, 51-515.

30-14-216. Pooling of grain prohibited. (1) It is unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into a contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station or with its agent whereby:

(a) the amount of grain to be received or handled by the warehouses at such station is to be equalized or pooled between the warehouses;

(b) the profits or earnings derived from the warehouses are to be divided, pooled, or apportioned in any manner; or

(c) the price to be paid for any kind of grain at such station is to be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding constitutes a separate offense.

History: En. Sec. 1, Ch. 69, L. 1915; re-en. Sec. 10912, R.C.M. 1921; Sec. 94-1115, R.C.M. 1947; redes. 51-411 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10912, R.C.M. 1935; amd. and redes. 51-516 by Sec. 16, Ch. 518, L. 1977; R.C.M. 1947, 51-516.

30-14-217. Destruction of food. It is unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other product or article which is customary or proper food for human beings and is in fit sanitary condition to be used as such.

History: En. Sec. 1, Ch. 16, L. 1919; re-en. Sec. 10914, R.C.M. 1921; Sec. 94-1117, R.C.M. 1947; redes. 51-413 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10914 R.C.M.; amd. and redes. 51-517, by Sec. 17, Ch. 518, L. 1977; R.C.M. 1947, 51-517.

30-14-218. Alteration of invoices prohibited. It is unlawful for a person to change, alter, substitute, or falsify an invoice if the practice tends to injure a competitor, destroy competition, or mislead a court or the department. Such practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in 30-14-224.

History: En. Sec. 4, Ch. 50, L. 1939; amd. Sec. 124, Ch. 431, L. 1975; Sec. 51-116, R.C.M. 1947; amd. and redes. 51-518 by Sec. 18, Ch. 518, L. 1977; R.C.M. 1947, 51-518.

30-14-219. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-218 is an illegal contract and no recovery thereon may be had.

History: En. Sec. 9, Ch. 80, L. 1937; Sec. 51-110, R.C.M. 1947; amd. and redes. 51-522 by Sec. 22, Ch. 518, L. 1977; R.C.M. 1947, 51-522.

30-14-220. Enforcement by department. (1) The department shall prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department shall:

(a) make its own investigation;

(b) within 60 days of the finding of probable cause make a written report of its investigation; and

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part and if it appears to the department that a proceeding by it would be in the interest of the public, it shall issue and serve upon the person a complaint stating the charges and containing a notice of a hearing at a place and upon a day not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained against may appear at the place and time so fixed and show cause why an order should not be entered by the department requiring such person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring such person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings under this section shall be given precedence over other civil cases pending in the district court and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than $1,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967; amd. Sec. 121, Ch. 431, L. 1975; Sec. 51-113, R.C.M. 1947; amd. and redes. 51-519 by Sec. 19, Ch. 518, L. 1977; R.C.M. 1947, 51-519.

30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled to testify or produce evidence after having claimed his privilege against self-incrimination. An individual so testifying is not exempt from prosecution and punishment for perjury committed in testifying.

History: En. Sec. 3, Ch. 50, L. 1939; amd. Sec. 123, Ch. 431, L. 1975; Sec. 51-115, R.C.M. 1947; amd. and redes. 51-520 by Sec. 20, Ch. 518, L. 1977; R.C.M. 1947, 51-520.

30-14-222. Injunctions — damages — production of evidence. (1) Any person, if injured thereby, or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-218 and for the recovery of damages. If in such action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the defendant from a continuance thereof. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the Montana rules of civil procedure. In addition the books and records of any such defendant may be brought into court and introduced into evidence by reference. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under 30-14-205 through 30-14-218 and 30-14-224.

History: En. Sec. 10, Ch. 80, L. 1937; Sec. 51-111, R.C.M. 1947; amd. and redes. 51-521 by Sec. 21, Ch. 518, L. 1977; R.C.M. 1947, 51-521.

30-14-223. Department to institute suit. Upon the third violation of any of the provisions of 30-14-205 through 30-14-218 by any corporation, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such corporation and to permanently enjoin it from transacting business in this state. If in such action the court finds that the corporation is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the corporation from doing business in this state permanently or for such time as the court orders or shall annul the charter or revoke the franchise of such corporation.

History: En. Sec. 8, Ch. 80, L. 1937; Sec. 51-109, R.C.M. 1947; amd. and redes. 51-523 by Sec. 23, Ch. 518, L. 1977; R.C.M. 1947, 51-523.

30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 30-14-205 through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, or to anyone either directly or indirectly engaged with him in such business, for a period of 1 year.

History: En. 51-524 by Sec. 24, Ch. 518, L. 1977; R.C.M. 1947, 51-524.

Parts 3 and 4 reserved

Part 5

Personal Solicitation Sales

30-14-501. Purpose. The purpose of this part is to afford consumers subjected to high pressure personal solicitation sales tactics a cooling-off period.

History: En. Sec. 1, Ch. 426, L. 1973; amd. Sec. 1, Ch. 191, L. 1977; R.C.M. 1947, 85-501.

30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor child engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

History: En. 85-502.1 by Sec. 2, Ch. 191, L. 1977; R.C.M. 1947, 85-502.1.

30-14-503. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization he represents, the indentity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

History: En. 85-502.2 by Sec. 3, Ch. 191, L. 1977; R.C.M. 1947, 85-502.2.

30-14-504. Buyer's right to cancel — time allowed — notice — return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: En. Sec. 3, Ch. 426, L. 1973; amd. Sec. 4, Ch. 191, L. 1977; R.C.M. 1947, 85-503.

30-14-505. Notice of right to cancel. (1) The seller shall furnish the buyer a notice which contains the statement set forth in subsection (a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 shall begin to run from the time the seller complies with this section.

History: En. Sec. 4, Ch. 426, L. 1973; amd. Sec. 5, Ch. 191, L. 1977; R.C.M. 1947, 85-504.

30-14-506. Repayment to buyer — retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: En. Sec. 5, Ch. 426, L. 1973; amd. Sec. 6, Ch. 191, L. 1977; R.C.M. 1947, 85-505.

30-14-507. Redelivery of goods. (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which

time the goods are otherwise at the seller's risk, and such goods must be returned in substantially the same condition as received.

History: En. Sec. 6, Ch. 426, L. 1973; amd. Sec. 7, Ch. 191, L. 1977; R.C.M. 1947, 85-506.

30-14-508. Violation. Except where inconsistent with the provisions of this part, a violation of this part is a violation of part 1.

History: En. 85-507 by Sec. 8, Ch. 191, L. 1977; R.C.M. 1947, 85-507.

Part 6

Sale of Imitation Indian Articles

30-14-601. Definitions. As used in this part, the following definitions apply:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine or made wholly out of synthetic or artificial materials or articles which are not made by Indian labor or workmanship.

History: En. Sec. 1, Ch. 42, L. 1967; R.C.M. 1947, 85-301.

30-14-602. Articles to be designated and segregated. No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles shall be physically segregated from authentic Indian articles for display purposes.

History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973; R.C.M. 1947, 85-302.

30-14-603. Designation of authenticity. Only those articles bearing a registered trademark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967; R.C.M. 1947, 85-303.

30-14-604. Violation as misdemeanor. Any person who violates this part is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967; R.C.M. 1947, 85-304.

Part 7

Fraudulent Financing of Mining and Oil Companies

30-14-701. Mining and oil companies — fraudulent handling of finances. For the purposes of 30-14-701 through 30-14-704, the following acts and offenses relative to the handling of the finances of mine and oil operations within the state of Montana shall be deemed fraudulent:

(1) failure to expend at least 75% of all money raised from the public from the sale of stock or securities of any other kind or character in the actual operation and

development of the oil and mining property or in the construction of treating plants or from bona fide payments on the purchase price of state property;

(2) failure to apply net earnings from said operations, after deducting only reasonable and legitimate expenses, to either a reserve fund, distribution of dividends, liquidation of bona fide indebtedness, or reasonable development of said properties;

(3) the operation of holding companies in such a manner as to deprive the stockholders of the parent company of an equitable interest in the earnings of the parent company.

History: En. Sec. 1, Ch. 199, L. 1935; re-en. Sec. 11458.1, R.C.M. 1935; Sec. 94-2322, R.C.M. 1947; redes. 15-22-141 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-141.

30-14-702. Application. The provisions of 30-14-701 through 30-14-704 shall apply to any person, corporation, or other form of association now operating or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales to the public, and operating within the state of Montana. The provisions of 30-14-701 through 30-14-704 shall not apply to any person, firm, corporation, or cooperative association holding a permit in good standing from the state investment department or to securities listed on the New York stock exchange, Boston stock exchange, the board of trade of the city of Chicago, the Chicago stock exchange, or the New York curb exchange.

History: En. Sec. 2, Ch. 199, L. 1935; re-en. Sec. 11458.2, R.C.M. 1935; Sec. 94-2323, R.C.M. 1947; redes. 15-22-142 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-142.

30-14-703. Investigation of complaints. Any stockholder or creditor of a mining or oil company as heretofore provided in 30-14-701 through 30-14-704 who has bona fide reason to believe that the provisions of 30-14-701 through 30-14-704 have been violated may complain relative thereto to the attorney general of the state, the county attorney of the county in which the property is located, or the state investment commissioner, and it shall be incumbent upon the officers mentioned to make a complete investigation of the records and affairs of said corporation or corporations. In the event the facts disclose the violation of the provisions of 30-14-701 through 30-14-704, it shall be the duty of the officer to prefer charges against the officers and directors of the corporation or corporations involved.

History: En. Sec. 3, Ch. 199, L. 1935; re-en. Sec. 11458.3, R.C.M. 1935; Sec. 94-2324, R.C.M. 1947; redes. 15-22-143 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-143.

30-14-704. Penalty. Any person or the officers or directors of any corporation, cooperative association, or any other association of any kind or character found guilty of the violation of the provisions of 30-14-701 through 30-14-704 shall be subject to imprisonment in the state prison for a term of not less than 90 days or more than 3 years or by a fine of not less than $100 or more than $1,000 or both such fine and imprisonment.

History: En. Sec. 4, Ch. 199, L. 1935; re-en. Sec. 11458.4, R.C.M. 1935; Sec. 94-2325, R.C.M. 1947; redes. 15-22-144 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-144.

TITLE 31

CREDIT TRANSACTIONS AND RELATIONSHIPS

Ch.
1. Credit Transactions.
2. Debtor and Creditor Relationships.
3. Related Credit Practices.

CHAPTER 1

CREDIT TRANSACTIONS

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Part 1

Loans of Money — Interest Rates

31-1-101. Loan of money — what constitutes. A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the law on loan for use.

History: En. Sec. 2580, Civ. C. 1895; re-en. Sec. 5206, Rev. C. 1907; re-en. Sec. 7720, R.C.M. 1921; Cal. Civ. C. Sec. 1912; Field Civ. C. Sec. 966; re-en. Sec. 7720, R.C.M. 1935; R.C.M. 1947, 47-119.

31-1-102. Loan to be repaid in current money. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

History: En. Sec. 2581, Civ. C. 1895; re-en. Sec. 5207, Rev. C. 1907; re-en. Sec. 7721, R.C.M. 1921; Cal. Civ. C. Sec. 1913; Field Civ. C. Sec. 967; re-en. Sec. 7721, R.C.M. 1935; R.C.M. 1947, 47-120.

31-1-103. Loan presumed to be on interest. Whenever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing.

History: En. Sec. 2582, Civ. C. 1895; re-en. Sec. 5208, Rev. C. 1907; re-en. Sec. 7722, R.C.M. 1921; Cal. Civ. C. Sec. 1914; Based on Field Civ. C. Sec. 968; re-en. Sec. 7722, R.C.M. 1935; R.C.M. 1947, 47-121.

31-1-104. Interest defined. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.

History: En. Sec. 2583, Civ. C. 1895; re-en. Sec. 5209, Rev. C. 1907; re-en. Sec. 7723, R.C.M. 1921; Cal. Civ. C. Sec. 1915; Based on Field Civ. C. Sec. 969; re-en. Sec. 7723, R.C.M. 1935; R.C.M. 1947, 47-122.

31-1-105. Annual rate. When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

History: En. Sec. 2584, Civ. C. 1895; re-en. Sec. 5210, Rev. C. 1907; re-en. Sec. 7724, R.C.M. 1921; Cal. Civ. C. Sec. 1916; Field Civ. C. Sec. 970; re-en. Sec. 7724, R.C.M. 1935; R.C.M. 1947, 47-123.

31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 6% a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R.C.M. 1921; Cal. Civ. C. Sec. 1917; amd. Sec. 1, Ch. 144, L. 1933; re-en. Sec. 7725, R.C.M. 1935; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971; amd. Sec. 11, Ch. 185, L. 1977; R.C.M. 1947, 47-124.

31-1-107. Interest rate allowed by agreement. (1) On amounts up to $150,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 4 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment.

(2) On amounts exceeding $150,000 and up to $300,000, parties may agree in writing for the payment of any rate of interest not more than 10% per annum or more than 5 percentage points in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment.

(3) On amounts exceeding $300,000, parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment.

History: En. Sec. 2586, Civ. C. 1895; re-en. Sec. 5212, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1913; amd. Sec. 1, Ch. 62, L. 1919; re-en. Sec. 7726, R.C.M. 1921; Cal. Civ. C. Sec. 1918; re-en. Sec. 7726, R.C.M. 1935; amd. Sec. 1, Ch. 503, L. 1975; R.C.M. 1947, 47-125.

31-1-108. Penalty for usury — action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 shall be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries or which has been agreed to be paid thereon.

(2) When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging same a sum double the amount of interest so paid, provided that such action shall be brought within 2 years after the payment of said interest, and provided that, before any suit

may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid.

History: En. Sec. 2, Ch. 36, L. 1913; re-en. Sec. 7727, R.C.M. 1921; re-en. Sec. 7727, R.C.M. 1935; R.C.M. 1947, 47-126.

31-1-109. When interest becomes part of principal. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal and thereafter bear the same rate of interest as the principal debt.

History: En. Sec. 2587, Civ. C. 1895; re-en. Sec. 5213, Rev. C. 1907; re-en. Sec. 7728, R.C.M. 1921; Cal. Civ. C. Sec. 1919; re-en. Sec. 7728, R.C.M. 1935; R.C.M. 1947, 47-127.

31-1-110. Interest — judgment. Interest is payable on judgments recovered in the courts of this state at the rate of 6% per annum and no greater rate. Such interest must not be compounded in any manner or form.

History: En. Sec. 2588, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5214, Rev. C. 1907; re-en. Sec. 7729, R.C.M. 1921; Cal. Civ. C. Sec. 1920; amd. Sec. 1, Ch. 143, L. 1933; re-en. Sec. 7729, R.C.M. 1935; R.C.M. 1947, 47-128.

Part 2

Retail Installment Sales

31-1-201. Short title. This part may be cited as the "Montana Retail Installment Sales Act".

History: En. Sec. 1, Ch. 282, L. 1959; R.C.M. 1947, 74-601.

31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(g) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(h) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(i) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(j) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(k) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(l) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(m) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(n) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(o) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(p) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(q) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made therefor, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971; amd. Sec. 137, Ch. 431, L. 1975; R.C.M. 1947, 74-602.

31-1-203. Penalties. (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959; amd. Sec. 16, Ch. 185, L. 1977; amd. Sec. 3, Ch. 284, L. 1977; R.C.M. 1947, 74-611.

31-1-204. Waiver. Any waiver of the provisions of this part shall be unenforceable and void.

History: En. Sec. 12, Ch. 282, L. 1959; R.C.M. 1947, 74-612.

31-1-205 through 31-1-210 reserved.

31-1-211. Powers of department. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest

warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon his being brought before the judge, proceed to a hearing of the case. The judge may compel:

(a) obedience to the subpoena;

(b) the answering of any question;

(c) the production of any evidence that may be proper; or

(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both.

History: En. Sec. 6, Ch. 282, L. 1959; amd. Sec. 140, Ch. 431, L. 1975; amd. Sec. 15, Ch. 185, L. 1977; R.C.M. 1947, 74-606.

31-1-212. Investigations and complaints. (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved.

History: En. Sec. 5, Ch. 282, L. 1959; amd. Sec. 139, Ch. 431, L. 1975; R.C.M. 1947, 74-605.

31-1-213 through 31-1-220 reserved.

31-1-221. Licensing of sales finance companies required. (1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this part, except that no bank, trust company, or savings and loan association authorized to do business in this state shall be required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the department. The application shall contain:

(a) the name of the applicant;

(b) date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information as to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be the sum of $100 for each place of business of the licensee in this state.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of such application and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this part for a period which shall expire December 31 next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this part under any other name.

History: En. Sec. 3, Ch. 282, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 74-603.

31-1-222. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee.

History: En. Sec. 4, Ch. 282, L. 1959; amd. Sec. 138, Ch. 431, L. 1975; amd. Sec. 14, Ch. 185, L. 1977; R.C.M. 1947, 74-604.

31-1-223 through 31-1-230 reserved.

31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien, or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such case, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least 8-point type. The contract shall contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and shall clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract shall contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's down payment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items (a) and (b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance which is the sum of items (c), (d), and (e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items (f) and (g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period thereof.

(6) The items in (5) need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract shall, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract, be conclusive proof:

(a) of such delivery;

(b) that the contract when signed did not contain any blank spaces except as herein provided; and

(c) of compliance with 31-1-231 through 31-1-236.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

31-1-232. Buyer's right of rescission. The seller shall deliver to the buyer or mail to him at his address shown in the contract a copy of the contract, signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

31-1-233. Insurance. (1) The amount, if any, included for insurance which may be purchased by the holder of the contract shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where such rates are required by law to be approved by said department.

(2) All such insurance shall be written by an insurance company authorized to do business in this state and shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state.

(3) A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder as well as the buyer, but such insurance shall be limited to insurance against substantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer.

(5) If such insurance for which such identified charge is made insures the life, safety, or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coverages; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary thereof.

(6) The seller shall not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company, provided that:

(a) the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonably or arbitrarily withheld; and

(b) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his agent, broker, or company shall be optional with the seller.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

31-1-234. Transfer of equity — fee. A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed $15.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

31-1-235. Delinquency fee. The holder may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or $5, whichever is less, or in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding 15% of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

31-1-236. Notice and receipt of payment. (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

31-1-237 through 31-1-240 reserved.

31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) as to motor vehicles:

(i) class 1—any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, $7 per $100 per year;

(ii) class 2—any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made, $9 per $100 per year;

(iii) class 3—any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made, $11 per $100 per year.

(b) as to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over $5,000, $9 per $100 per year. This subsection shall not apply to agricultural equipment.

(c) as to services and goods other than as provided under subsections (1)(a) and (1)(b) above:

(i) on so much of the principal balance as does not exceed $300, $11 per $100 per year;

(ii) if the principal balance exceeds $300 but is less than $1,000, $9 per $100 per year on that portion over $300;

(iii) if the principal balance exceeds $1,000, $7 per $100 per year on that portion over $1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 31-1-231(5) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of $20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive

a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed 1 ½% for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(a) the average daily balance in the account in the billing cycle period;

(b) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or

(c) the median amount within a $10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(5) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971; amd. Sec. 1, Ch. 252, L. 1975; amd. Sec. 1, Ch. 284, L. 1977; R.C.M. 1947, 74-608.

31-1-242. Refunds on prepayment. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.

History: En. Sec. 9, Ch. 282, L. 1959; R.C.M. 1947, 74-609.

31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241(1) and by reclassifying in the case of motor vehicles by its then year model for the term of the refinancing agreement but otherwise subject to the provisions of this part governing computation of the original finance charge. The provisions of this part relating to minimum finance charges under 31-1-241(2) and an acquisition cost under 31-1-242 shall not apply in calculating refinance charges on the contract extended, deferred, renewed, or restated. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made.

History: En. Sec. 10, Ch. 282, L. 1959; amd. Sec. 2, Ch. 284, L. 1977; R.C.M. 1947, 74-610.

Part 3

Wage Brokers

31-1-301. Wage brokers to procure license and give bond. From and after February 27, 1911, no person, company, corporation, or association shall establish or conduct the business of wage broker within the state of Montana unless such person, company, corporation, or association shall have first procured a license from the proper authorities as herein provided and shall have executed a bond in such sum as said authorities may require for the faithful carrying out of the provisions of this part and of the ordinances of any town or city in which such business may be carried on.

History: En. Sec. 1, Ch. 56, L. 1911; re-en. Sec. 4173, R.C.M. 1921; re-en. Sec. 4173, R.C.M. 1935; R.C.M. 1947, 41-1501.

31-1-302. Issuance of license — terms and amount thereof. The board of county commissioners of any county in this state or, in case said business be carried on in any incorporated city or town, the city council or board of trustees of said city or town may in its discretion, from time to time, grant licenses to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum therefor and upon such terms and conditions as the said board of county commissioners or city council or board of trustees shall by resolution or ordinance require.

History: En. Sec. 2, Ch. 56, L. 1911; re-en. Sec. 4174, R.C.M. 1921; re-en. Sec. 4174, R.C.M. 1935; R.C.M. 1947, 41-1502.

31-1-303. Wage broker defined. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly, to any employee or wage earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage earner, shall be deemed to be a wage broker within the meaning of this part.

History: En. Sec. 3, Ch. 56, L. 1911; re-en. Sec. 4175, R.C.M. 1921; re-en. Sec. 4175, R.C.M. 1935; R.C.M. 1947, 41-1503.

31-1-304. Restrictions upon assignment of wages or salary. No assignment of his or her wages or salary by any employee or wage earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned.

History: En. Sec. 4, Ch. 56, L. 1911; re-en. Sec. 4176, R.C.M. 1921; re-en. Sec. 4176, R.C.M. 1935; R.C.M. 1947, 41-1504.

31-1-305. Interest on loans — amount and computation. No wage broker shall ask, demand, or receive, either as compensation or interest or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage earner in excess of 12% per annum. Said compensation or rate of interest shall be computed upon the amount actually advanced to and received by the employee or wage earner and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

History: En. Sec. 5, Ch. 56, L. 1911; re-en. Sec. 4177, R.C.M. 1921; re-en. Sec. 4177, R.C.M. 1935; R.C.M. 1947, 41-1505.

31-1-306. Spouse must join in assignment of wages — acknowledgment. No assignment of wages or salary to a wage broker by a married person who shall have a spouse residing in this state shall be valid or enforceable without the consent of such spouse, evidenced by the spouse's signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments. No wage broker or person connected with a wage broker, directly or indirectly, shall be authorized to take any such acknowledgments.

History: En. Sec. 6, Ch. 56, L. 1911; re-en. Sec. 4178, R.C.M. 1921; re-en. Sec. 4178, R.C.M. 1935; amd. Sec. 23, Ch. 535, L. 1975; R.C.M. 1947, 41-1506.

31-1-307. Assignments invalid without notice to employer — filing assignments. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within 1 day from the date of its execution. All assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

History: En. Sec. 7, Ch. 56, L. 1911; re-en. Sec. 4179, R.C.M. 1921; re-en. Sec. 4179, R.C.M. 1935; R.C.M. 1947, 41-1507.

31-1-308. Assignment to be considered a loan. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage earner shall be held and considered a loan, in the sum of the amount actually paid to and received by such employee or wage earner, and shall be subject to all the provisions of this part.

History: En. Sec. 8, Ch. 56, L. 1911; re-en. Sec. 4180, R.C.M. 1921; re-en. Sec. 4180, R.C.M. 1935; R.C.M. 1947, 41-1508.

31-1-309. Violation — penalties. Any person, company, corporation, or association and any officer, member, agent, or employee thereof violating any or either of the provisions of 31-1-301 to 31-1-308, both inclusive, shall be deemed guilty of a misdemeanor and upon conviction shall be liable to a fine in the sum of not less than $100 or more than $500 for each offense or to imprisonment in the county jail for a period not to exceed 90 days, or both, and in addition thereto the debt and accrued interest thereon shall be discharged and the security shall be void.

History: En. Sec. 9, Ch. 56, L. 1911; re-en. Sec. 4181, R.C.M. 1921; amd. Sec. 1, Ch. 112, L. 1929; re-en. Sec. 4181, R.C.M. 1935; R.C.M. 1947, 41-1509.

31-1-310. When note, instrument, or assignment void. Any note, bill, or other evidence of indebtedness and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this part shall be void as against the creditors of the assignor or transferor.

History: En. Sec. 10, Ch. 56, L. 1911; re-en. Sec. 4182, R.C.M. 1921; re-en. Sec. 4182, R.C.M. 1935; R.C.M. 1947, 41-1510.

Part 4

Pawnbrokers

31-1-401. Interest pawnbrokers may receive. No person may carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license.

A pawnbroker or junk dealer or his employees or agents may not charge more than 3% a month for interest, commission, discount, storage, and caring for property pledged.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3310, Pol. C. 1895; Sec. 2105, Rev. C. 1907; re-en. Sec. 4186, R.C.M. 1921; re-en. Sec. 4186, R.C.M. 1935; amd. Sec. 12, Ch. 185, L. 1977; R.C.M. 1947, 66-1601.

31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with:

(a) the date of the pawning or purchasing;

(b) date when the article must be redeemed;

(c) the name of the person by whom the same was pawned or by whom purchased; and

(d) the amount loaned thereon or paid therefor.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register:

(a) the name of the purchaser;

(b) the time of the sale; and

(c) the price paid therefor.

(3) The register must always be open to inspection and examination of any peace officer or other persons.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3315, Pol. C. 1895; re-en. Sec. 2110, Rev. C. 1907; re-en. Sec. 4191, R.C.M. 1921; re-en. Sec. 4191, R.C.M. 1935; R.C.M. 1947, 66-1606.

31-1-403. When search warrant may issue. Whenever any person makes oath before a magistrate that any property belonging to him has been taken by theft or otherwise without his consent and that he has reason to believe or suspect and does suspect that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken and, if found, to seize and bring the same before him.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3311, Pol. C. 1895; re-en. Sec. 2106, Rev. C. 1907; re-en. Sec. 4187, R.C.M. 1921; re-en. Sec. 4187, R.C.M. 1935; amd. Sec. 54, Ch. 359, L. 1977; R.C.M. 1947, 66-1602.

31-1-404. Service of search warrant. The officer to whom said warrant is directed and delivered must execute the same and proceed in the same manner as in case of other search warrants.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3312, Pol. C. 1895; re-en. Sec. 2107, Rev. C. 1907; re-en. Sec. 4188, R.C.M. 1921; re-en. Sec. 4188, R.C.M. 1935; R.C.M. 1947, 66-1603.

31-1-405. Delivery of property to claimant — bond. Upon any property seized by virtue of such warrant being brought before the magistrate who issued the same, he must cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as hereinafter directed; and if such bond be not executed within 48 hours, the magistrate must cause the property to be delivered to the person from whose possession it was taken.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3313, Pol. C. 1895; re-en. Sec. 2108, Rev. C. 1907; re-en. Sec. 4189, R.C.M. 1921; re-en. Sec. 4189, R.C.M. 1935; R.C.M. 1947, 66-1604.

31-1-406. Conditions of bond. The bond must be in a penal sum equal to double the value of the property claimed, with two sureties approved by the magistrate in favor of the person from whose possession the property was taken, with a condition that the claimant will, on demand, pay all damage that may be recovered against him in any suit to be brought within 20 days from the date of such bond by the pawnbroker or junk dealer from whose possession the property was taken.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3314, Pol. C. 1895; re-en. Sec. 2109, Rev. C. 1907; re-en. Sec. 4190, R.C.M. 1921; re-en. Sec. 4190, R.C.M. 1935; R.C.M. 1947, 66-1605.

31-1-407. Violation a misdemeanor. A violation of any of the provisions of this part is a misdemeanor.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R.C.M. 1921; re-en. Sec. 4192, R.C.M. 1935; amd. Sec. 21, Ch. 513, L. 1973; amd. Sec. 13, Ch. 185, L. 1977; R.C.M. 1947, 66-1607.

CHAPTER 2

DEBTOR AND CREDITOR RELATIONSHIPS

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31-2-317. Conveyance of partnership property.
Sections 31-2-318 through 31-2-320 reserved.
31-2-321. Rights of creditors whose claims have matured.
31-2-322. Rights of creditors whose claims have not matured.
31-2-323. Limitation on creditor's right.
31-2-324. Cases not provided for.
31-2-325. Construction.

Part 1

General Provisions — Definitions

31-2-101. Debtor defined. A debtor is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

History: En. Sec. 4480, Civ. C. 1895; re-en. Sec. 6122, Rev. C. 1907; re-en. Sec. 8598, R.C.M. 1921; Cal. Civ. C. Sec. 3429; Field Civ. C. Sec. 1913; re-en. Sec. 8598, R.C.M. 1935; R.C.M. 1947, 18-101.

31-2-102. Creditor defined. A creditor is one in whose favor an obligation exists, by reason of which he is or may become entitled to the payment of money.

History: En. Sec. 4481, Civ. C. 1895; re-en. Sec. 6123, Rev. C. 1907; re-en. Sec. 8599, R.C.M. 1921; Cal. Civ. C. Sec. 3430; Field Civ. C. Sec. 1914; re-en. Sec. 8599, R.C.M. 1935; R.C.M. 1947, 18-102.

31-2-103. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

History: En. Sec. 4482, Civ. C. 1895; re-en. Sec. 6124, Rev. C. 1907; re-en. Sec. 8600, R.C.M. 1921; Cal. Civ. C. Sec. 3431; Field Civ. C. Sec. 1915; re-en. Sec. 8600, R.C.M. 1935; R.C.M. 1947, 18-103.

31-2-104. Payments in preference. A debtor may pay one creditor in preference to another or may give to one creditor security for the payment of his demand in preference to another.

History: En. Sec. 4483, Civ. C. 1895; re-en. Sec. 6125, Rev. C. 1907; re-en. Sec. 8601, R.C.M. 1921; Cal. Civ. C. Sec. 3432; Field Civ. C. Sec. 1916; re-en. Sec. 8601, R.C.M. 1935; R.C.M. 1947, 18-104.

31-2-105. Relative rights of different creditors. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim and another person has an interest in or is entitled as a creditor to resort to some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

History: En. Sec. 4484, Civ. C. 1895; re-en. Sec. 6126, Rev. C. 1907; re-en. Sec. 8602, R.C.M. 1921; Cal. Civ. C. Sec. 3433; Field Civ. C. Sec. 1917; re-en. Sec. 8602, R.C.M. 1935; R.C.M. 1947, 18-105.

Part 2

Assignments for Benefit of Creditors

31-2-201. When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees in trust for the satisfaction of his creditors, in conformity to the provisions of this part, subject, however, to the provisions of this code relative to trusts and fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, corporations, or other specific classes or persons.

History: En. Sec. 4510, Civ. C. 1895; re-en. Sec. 6136, Rev. C. 1907; re-en. Sec. 8612, R.C.M. 1921; Cal. Civ. C. Sec. 3449; Field Civ. C. Sec. 1924; re-en. Sec. 8612, R.C.M. 1935; R.C.M. 1947, 18-301.

31-2-202. Insolvency — what constitutes. A debtor is insolvent, within the meaning of this part, when he is unable to pay his debts from his own means as they become due.

History: En. Sec. 4511, Civ. C. 1895; re-en. Sec. 6137, Rev. C. 1907; re-en. Sec. 8613, R.C.M. 1921; Cal. Civ. C. Sec. 3450; Field Civ. C. Sec. 1925; re-en. Sec. 8613, R.C.M. 1935; R.C.M. 1947, 18-302.

31-2-203. Certain transfers not affected. The provisions of this part do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

History: En. Sec. 4512, Civ. C. 1895; re-en. Sec. 6138, Rev. C. 1907; re-en. Sec. 8614, R.C.M. 1921; Cal. Civ. C. Sec. 3451; Field Civ. C. Sec. 1926; re-en. Sec. 8614, R.C.M. 1935; R.C.M. 1947, 18-303.

31-2-204. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

History: En. Sec. 4513, Civ. C. 1895; re-en. Sec. 6139, Rev. C. 1907; re-en. Sec. 8615, R.C.M. 1921; Cal. Civ. C. Sec. 3452; Field Civ. C. Sec. 1927; re-en. Sec. 8615, R.C.M. 1935; R.C.M. 1947, 18-304.

31-2-205. Preference given for wages. In all assignments of property made by any person, association, partnership, chartered company, or corporation to trustees or assignees on account of inability of the assignor at the time of the assignment to pay his debts or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such assignor for services rendered within 4 months immediately previous to such assignment, not to exceed the actual amount owed for each person, are preferred claims and must be paid by such trustees or assignees before any other creditor of such assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; re-en. Sec. 4514, Civ. C. 1895; re-en. Sec. 6140, Rev. C. 1907; re-en. Sec. 8616, R.C.M. 1921; re-en. Sec. 8616, R.C.M. 1935; amd. Sec. 6, Ch. 109, L. 1943; R.C.M 1947, 18-305.

31-2-206. Preference to be absolute. A preference in an assignment for the benefit of creditors can only be given absolutely and without reserving any power of revocation.

History: En. Sec. 4515, Civ. C. 1895; re-en. Sec. 6141, Rev. C. 1907; re-en. Sec. 8617, R.C.M. 1921; Field Civ. C. Sec. 1929; re-en. Sec. 8617, R.C.M. 1935; R.C.M. 1947, 18-306.

31-2-207. Certain rights not affected by preferences in assignment. No provision in an assignment giving a preference to a creditor can affect or impair any right of another creditor to priority of payment, whether created by law or arising from an obligation or transaction of the parties.

History: En. Sec. 4516, Civ. C. 1895; re-en. Sec. 6142, Rev. C. 1907; re-en. Sec. 8618, R.C.M. 1921; Field Civ. C. Sec. 1930; re-en. Sec. 8618, R.C.M. 1935; R.C.M. 1947, 18-307.

31-2-208. Joint and separate debts. Joint or joint and several debtors can prefer their joint creditors only out of joint property and can prefer the individual creditors of each only out of the separate property of each.

History: En. Sec. 4517, Civ. C. 1895; re-en. Sec. 6143, Rev. C. 1907; re-en. Sec. 8619, R.C.M. 1921; Field Civ. C. Sec. 1931; re-en. Sec. 8619, R.C.M. 1935; R.C.M. 1947, 18-308.

31-2-209. Assignment — when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates 72-20-203(1).

History: En. Sec. 4518, Civ. C. 1895; re-en. Sec. 6144, Rev. C. 1907; re-en. Sec. 8620, R.C.M. 1921; Cal. Civ. C. Sec. 3457; Based on Field Civ. C. Sec. 1932; re-en. Sec. 8620, R.C.M. 1935; R.C.M. 1947, 18-309.

31-2-210. The instrument of assignment. (1) An assignment for the benefit of creditors must be in writing and subscribed by the assignor or by his agent thereto authorized by writing.

(2) It must be acknowledged or proved and certified in the mode prescribed by the law on recording transfers of real property and recorded as required by 31-2-215 and 31-2-216, but recording in one county constitutes a compliance with the last-mentioned sections.

(3) The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud such creditors.

(4) The assent of the assignee, subscribed and acknowledged by him, must appear in writing embraced in or at the end of or endorsed upon the assignment before the same is recorded and, if separate from the assignment, must be duly acknowledged.

History: En. Sec. 4519, Civ. C. 1895; re-en. Sec. 6145, Rev. C. 1907; re-en. Sec. 8621, R.C.M. 1921; Cal. Civ. C. Sec. 3458; Based on Field Civ. C. Sec. 1933; re-en. Sec. 8621, R.C.M. 1935; R.C.M. 1947, 18-310.

31-2-211. Compliance necessary to validity of assignment. Unless the provisions of 31-2-210 are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

History: En. Sec. 4520, Civ. C. 1895; re-en. Sec. 6146, Rev. C. 1907; re-en. Sec. 8622, R.C.M. 1921; Cal. Civ. C. Sec. 3459; Field Civ. C. Sec. 1934; re-en. Sec. 8622, R.C.M. 1935; R.C.M. 1947, 18-311.

31-2-212. Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value and has no greater rights than his assignor has in respect to things in action transferred by the assignment.

History: En. Sec. 4521, Civ. C. 1895; re-en. Sec. 6147, Rev. C. 1907; re-en. Sec. 8623, R.C.M. 1921; Cal. Civ. C. Sec. 3460; Field Civ. C. Sec. 1935; re-en. Sec. 8623, R.C.M. 1935; R.C.M. 1947, 18-312.

31-2-213. Inventory required. Within 20 days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by 31-2-215, a full and true inventory showing:

(1) all the creditors of the assignor;

(2) the place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated;

(3) the sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

(4) the true consideration of the liability in each case and the place where it arose;

(5) every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

(6) all property of the assignor at the date of the assignment which is exempt by law from execution; and

(7) all of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt; the encumbrances existing thereon; all vouchers and securities relating thereto; and the value of such property, according to the best knowledge of the assignor.

History: En. Sec. 4522, Civ. C. 1895; re-en. Sec. 6148, Rev. C. 1907; re-en. Sec. 8624, R.C.M. 1921; Cal. Civ. C. Sec. 3461; Field Civ. C. Sec. 1936; re-en. Sec. 8624, R.C.M. 1935; R.C.M. 1947, 18-313.

31-2-214. Verification of inventory — when assignee required to file — inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in 31-2-213, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

(2) (a) In case such assignor shall omit, neglect, or refuse to make and deliver such inventory within the 20 days required, the assignee named in such assignment shall, within 30 days after the date thereof, cause to be made and delivered to the judge of the district court of the county where such assignment is recorded such inventory as above required, insofar as he can.

(b) For such purpose, said judge shall, at any time upon the application of such assignee, compel by order such delinquent assignor and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess necessary to the proper making of such inventory.

(c) The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief.

(3) In case the assignee shall be unable to make and file such inventory within 30 days, the district judge may, upon application upon oath showing such inability, allow him such further time as shall be necessary, not exceeding 60 days.

(4) If the assignee fails to make and file such inventory within said 30 days or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal.

(5) The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is a contempt, and obedience to such order may be enforced by attachment.

(6) The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

History: En. Sec. 4523, Civ. C. 1895; re-en. Sec. 6149, Rev. C. 1907; re-en. Sec. 8625, R.C.M. 1921; Cal. Civ. C. Sec. 3462; re-en. Sec. 8625, R.C.M. 1935; R.C.M. 1947, 18-314.

31-2-215. Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded and the inventory required by 31-2-213 filed with the county clerk of the county in which the assignor resided at the date of the assignment or, if he did not then reside in this state, with the clerk of the county in which his principal place of business was then situated or, if he had not then a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was then situated.

History: En. Sec. 4524, Civ. C. 1895; re-en. Sec. 6150, Rev. C. 1907; re-en. Sec. 8626, R.C.M. 1921; Cal. Civ. C. Sec. 3463; Based on Field Civ. C. Sec. 1938; re-en. Sec. 8626, R.C.M. 1935; R.C.M. 1947, 18-315.

31-2-216. Recording and filing when more than one assignor. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded and a copy of the inventory required by 31-2-213 must be filed with the county clerk of the county in which any of the assignors resided at its date or in which any of them not then residing in this state then had a place of business.

History: En. Sec. 4525, Civ. C. 1895; re-en. Sec. 6151, Rev. C. 1907; re-en. Sec. 8627, R.C.M. 1921; Cal. Civ. C. Sec. 3464; Based on Field Civ. C. Sec. 1939; re-en. Sec. 8627, R.C.M. 1935; R.C.M. 1947, 18-316.

31-2-217. Effect of failing to record. An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

History: En. Sec. 4526, Civ. C. 1895; re-en. Sec. 6152, Rev. C. 1907; re-en. Sec. 8628, R.C.M. 1921; Cal. Civ. C. Sec. 3465; Based on Field Civ. C. Sec. 1940; re-en. Sec. 8628, R.C.M. 1935; R.C.M. 1947, 18-317.

31-2-218. Assignment of real property. When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of [73-201 through 73-205], as well as to those of this part.

History: En. Sec. 4527, Civ. C. 1895; re-en. Sec. 6153, Rev. C. 1907; re-en. Sec. 8629, R.C.M. 1921; Cal. Civ. C. Sec. 3466; Field Civ. C. Sec. 1941; re-en. Sec. 8629, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1977; R.C.M. 1947, 18-318.

31-2-219. Bond of assignees. Within 30 days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the state, for the use and benefit of the creditors, in such amount as may be fixed by a judge of the district court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

History: En. Sec. 4528, Civ. C. 1895; re-en. Sec. 6154, Rev. C. 1907; re-en. Sec. 8630, R.C.M. 1921; Cal. Civ. C. Sec. 3467; Based on Field Civ. C. Sec. 1942; re-en. Sec. 8630, R.C.M. 1935; R.C.M. 1947, 18-319.

31-2-220. Conditions of disposal and conversion. (1) Until the inventory and affidavit required by 31-2-213 and 31-2-214 have been made and filed and the assignee has given bond as required by 31-2-219, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

(2) But in case the assignor shall fail to present such inventory within the 20 days required, then the assignee, before the 10 days shall have elapsed, may apply to said district judge by verified petition for leave to file a provisional bond until such time as he may be able to present the inventory as herein provided.

(3) The district judge shall, in the case provided in 31-2-214, and may also at any time on the petition of one or more creditors showing misconduct or incompetency of the assignee or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than 5 days to the assignor, assignee, surety, and such other persons as such judge may prescribe:

(a) remove or discharge the assignee and appoint one or more in his place;

(b) order an accounting of the assignee so removed or discharged.

(4) The district judge may:

(a) enjoin said assignee from interfering with the assignor's estate and make provision by order for the safe custody of the same; and

(b) enforce obedience to such injunction and orders by attachment.

(5) Upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged.

(6) The new assignee shall give a bond, to be approved as required.

(7) The district judge shall have power by order to:

(a) require or allow any inventory or schedule filed to be corrected or amended;

(b) require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe; and

(c) enforce obedience to such orders by attachment.

History: En. Sec. 4529, Civ. C. 1895; re-en. Sec. 6155, Rev. C. 1907; amd. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8631, R.C.M. 1921; Cal. Civ. C. Sec. 3468; re-en. Sec. 8631, R.C.M. 1935; R.C.M. 1947, 18-320.

31-2-221. Notice to creditors to present claims. (1) The judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than 10 days from the publication thereof, which advertisement or notice shall be published in one newspaper, to be designated by the judge as most likely to give notice to the persons to be served, at least once and such additional times as the judge may direct. The last publication shall be at least 1 week prior to the date specified.

(2) Said verified claims of creditors shall set forth whether any and, if so, what securities are held for such claims and whether any and, if so, what payments have been made thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8632, R.C.M. 1921; re-en. Sec. 8632, R.C.M. 1935; R.C.M. 1947, 18-321.

31-2-222. Notices to parties interested in the estate as creditors or otherwise. (1) Parties interested in the estate as creditors or parties otherwise interested, if the judge so directs, shall have at least 10 days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee, of:

(a) all proposed sales of property, in bulk;

(b) the filing of the final account of the assignee and of the hearing thereon;

(c) any proposed compromise with creditors.

(2) Such notice may be given as the judge shall direct and must be returnable in court, or before the judge of the court at chambers, in the district.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8633, R.C.M. 1921; re-en. Sec. 8633, R.C.M. 1935; R.C.M. 1947, 18-322.

31-2-223. Duties of assignee. It shall be the duty of the assignee to:

(1) collect and reduce to money the property of the estate and close up the estate as expeditiously as possible;

(2) sell the property of the estate as soon as practicable and sell the accounts and bills receivable when deemed advisable;

(3) furnish such information concerning the estate as may be requested by parties in interest;

(4) keep regular accounts and pay dividends as often as is compatible with the best interests of the estate;

(5) file a final report and account at least 10 days before the hearing thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8634, R.C.M. 1921; re-en. Sec. 8634, R.C.M. 1935; R.C.M. 1947, 18-323.

31-2-224. Power of court. The court shall have power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered upon;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding their claim has not

been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and his surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8635, R.C.M. 1921; re-en. Sec. 8635, R.C.M. 1935; R.C.M. 1947, 18-324.

31-2-225. When further security required. The district judge may, upon his own motion or upon the application of any party in interest and on such notice as he may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

History: En. Sec. 4530, Civ. C. 1895; re-en. Sec. 6156, Rev. C. 1907; re-en. Sec. 8636, R.C.M. 1921; re-en. Sec. 8636, R.C.M. 1935; R.C.M. 1947, 18-325.

31-2-226. Accounting of assignee. After 6 months from the date of an assignment for the benefit of creditors, the assignee may be required, on petition of any creditor, to account in the manner prescribed by [Title 93] before the district court of the county where the accompanying inventory was filed.

History: En. Sec. 4531, Civ. C. 1895; re-en. Sec. 6157, Rev. C. 1907; re-en. Sec. 8637, R.C.M. 1921; Cal. Civ. C. Sec. 3469; Based on Field Civ. C. Sec. 1944; re-en. Sec. 8637, R.C.M. 1935; R.C.M. 1947, 18-326.

31-2-227. Property exempt. Property exempt from execution and insurance upon the life of the assignor do not pass to the assignee by a general assignment for the benefit of creditors unless the instrument specially mentions them and declares an intention that they should pass thereby.

History: En. Sec. 4532, Civ. C. 1895; re-en. Sec. 6158, Rev. C. 1907; re-en. Sec. 8638, R.C.M. 1921; Cal. Civ. C. Sec. 3470; Field Civ. C. Sec. 1945; re-en. Sec. 8638, R.C.M. 1935; R.C.M. 1947, 18-327.

31-2-228. Compensation. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more and may restrict the commissions to a lesser amount or deny them altogether.

History: En. Sec. 4533, Civ. C. 1895; re-en. Sec. 6159, Rev. C. 1907; re-en. Sec. 8639, R.C.M. 1921; Cal. Civ. C. Sec. 3471; Field Civ. C. Sec. 1946; re-en. Sec. 8639, R.C.M. 1935; R.C.M. 1947, 18-328.

31-2-229. Assignees protected for acts done in good faith. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

History: En. Sec. 4534, Civ. C. 1895; re-en. Sec. 6160, Rev. C. 1907; re-en. Sec. 8640, R.C.M. 1921; Cal. Civ. C. Sec. 3472; Field Civ. C. Sec. 1947; re-en. Sec. 8640, R.C.M. 1935; R.C.M. 1947, 18-329.

31-2-230. Assent of creditors necessary to modification of assignment. An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the assignee cannot afterwards be canceled or modified by the parties thereto without the consent of every creditor affected thereby.

History: En. Sec. 4535, Civ. C. 1895; re-en. Sec. 6161, Rev. C. 1907; re-en. Sec. 8641, R.C.M. 1921; Cal. Civ. C. Sec. 3473; Field Civ. C. Sec. 1948; re-en. Sec. 8641, R.C.M. 1935; R.C.M. 1947, 18-330.

Part 3

Fraudulent Conveyances

31-2-301. Definitions. In this part, the following definitions apply:

(1) "Assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

(2) "Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property and the creation of any lien or encumbrance.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

(4) "Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

History: En. Sec. 1, Ch. 126, L. 1945; R.C.M. 1947, 29-101.

31-2-302. Insolvency defined. (1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

(2) In determining whether a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors and the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription.

History: En. Sec. 2, Ch. 126, L. 1945; R.C.M. 1947, 29-102.

31-2-303. Fair consideration defined. Fair consideration is given for property or obligation when:

(1) in exchange for such property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or an antecedent debt is satisfied; or

(2) such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property or obligation obtained.

History: En. Sec. 3, Ch. 126, L. 1945; R.C.M. 1947, 29-103.

31-2-304 through 31-2-310 reserved.

31-2-311. Conveyances by insolvent. Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

History: En. Sec. 4, Ch. 126, L. 1945; R.C.M. 1947, 29-104.

31-2-312. Conveyances by persons in business. Every conveyance made without fair consideration, when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

History: En. Sec. 5, Ch. 126, L. 1945; R.C.M. 1947, 29-105.

31-2-313. Conveyances by a person about to incur debts. Every conveyance made and every obligation incurred without fair consideration, when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

History: En. Sec. 6, Ch. 126, L. 1945; R.C.M. 1947, 29-106.

31-2-314. Conveyance made with intent to defraud. Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors is fraudulent as to both present and future creditors.

History: En. Sec. 7, Ch. 126, L. 1945; R.C.M. 1947, 29-107.

31-2-315. Certain transfers presumed fraudulent. Every transfer of personal property, other than a thing in action, and every lien thereon, other than a mortgage, when allowed by law, made by a person having at the time the possession or control of the property, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the things transferred is conclusively presumed to be fraudulent and therefore void against:

(1) those who are his creditors while he remains in possession;

(2) the successors in interest of such creditors;

(3) any persons on whom his estate devolves in trust for the benefit of others than himself; and

(4) purchasers or encumbrancers in good faith subsequent to the transfer.

History: En. Sec. 4491, Civ. C. 1895; re-en. Sec. 6128, Rev. C. 1907; re-en. Sec. 8604, R.C.M. 1921; Cal. Civ. C. Sec. 3440; Field Civ. C. Sec. 1919; re-en. Sec. 8604, R.C.M. 1935; amd. Sec. 5, Ch. 185, L. 1977; R.C.M. 1947, 29-208.

31-2-316. Determination of fraud. In all cases arising under the provisions of 31-2-315 or 31-2-323, except as otherwise provided in 31-2-315, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

History: En. Sec. 4493, Civ. C. 1895; re-en. Sec. 6130, Rev. C. 1907; re-en. Sec. 8606, R.C.M. 1921; Cal. Civ. C. Sec. 3442; Field Civ. C. Sec. 1923; re-en. Sec. 8606, R.C.M. 1935; R.C.M. 1947, 29-210.

31-2-317. Conveyance of partnership property. Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent is fraudulent as to partnership creditors if the conveyance is made or obligation is incurred:

(1) to a partner, whether with or without a promise by him to pay partnership debts; or

(2) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

History: En. Sec. 8, Ch. 126, L. 1945; R.C.M. 1947, 29-108.

31-2-318 through 31-2-320 reserved.

31-2-321. Rights of creditors whose claims have matured. (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase or one who has derived title immediately or mediately from such a purchaser:

(a) have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim; or

(b) disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.

History: En. Sec. 9, Ch. 126, L. 1945; R.C.M. 1947, 29-109.

31-2-322. Rights of creditors whose claims have not matured. (1) Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured, he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured.

(2) The court may:

(a) restrain the defendant from disposing of his property;

(b) appoint a receiver to take charge of the property;

(c) set aside the conveyance or annul the obligation; or

(d) make any order which the circumstances of the case may require.

History: En. Sec. 10, Ch. 126, L. 1945; R.C.M. 1947, 29-110.

31-2-323. Limitation on creditor's right. A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement by legal process of his right to take the property affected by the transfer or obligation.

History: En. Sec. 4492, Civ. C. 1895; re-en. Sec. 6129, Rev. C. 1907; re-en. Sec. 8605, R.C.M. 1921; Cal. Civ. C. Sec. 3441; Field Civ. C. Sec. 1922; re-en. Sec. 8605, R.C.M. 1935; R.C.M. 1947, 29-209.

31-2-324. Cases not provided for. In any case not provided for in this part the rules of law and equity, including the law merchant and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause shall govern.

History: En. Sec. 11, Ch. 126, L. 1945; R.C.M. 1947, 29-111.

31-2-325. Construction. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 12, Ch. 126, L. 1945; R.C.M. 1947, 29-112.

CHAPTER 3

RELATED CREDIT PRACTICES

Part 1 — Consumer Reporting Agencies

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Part 1

Consumer Reporting Agencies

31-3-101. Purpose. It is the purpose of this part to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this part. A further purpose of this part is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

History: En. 18-501 by Sec. 1, Ch. 547, L. 1975; R.C.M. 1947, 18-501.

31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) The term "consumer" means an individual.

(3) (a) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) other purposes authorized under 31-3-111.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under 31-3-131.

(4) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(8) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(9) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

History: En. 18-502 by Sec. 2, Ch. 547, L. 1975; R.C.M. 1947, 18-502.

31-3-103. Credit rating — property right. A credit rating is a property right with full constitutional protection.

History: En. 18-503 by Sec. 3, Ch. 547, L. 1975; R.C.M. 1947, 18-503.

31-3-104 through 31-3-110 reserved.

31-3-111. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(b) intends to use the information for employment purposes;

(c) intends to use the information in connection with the underwriting of insurance involving the consumer;

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

History: En. 18-504 by Sec. 4, Ch. 547, L. 1975; R.C.M. 1947, 18-504.

31-3-112. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

(2) suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than 7 years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

(5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years;

(6) any other adverse item of information which antedates the report by more than 7 years.

History: En. 18-505 by Sec. 5, Ch. 547, L. 1975; R.C.M. 1947, 18-505.

31-3-113. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and such disclosure is made in a writing mailed or otherwise delivered to the consumer not later than 3 days after the date on which the report was first requested and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the

violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

History: En. 18-506 by Sec. 6, Ch. 547, L. 1975; R.C.M. 1947, 18-506.

31-3-114. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of 31-3-112 and 31-3-113 and to limit the furnishing of consumer reports to the purposes listed under 31-3-111. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in 31-3-111.

(2) Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

History: En. 18-507 by Sec. 7, Ch. 547, L. 1975; R.C.M. 1947, 18-507.

31-3-115. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

History: En. 18-508 by Sec. 8, Ch. 547, L. 1975; R.C.M. 1947, 18-508.

31-3-116 through 31-3-120 reserved.

31-3-121. Disclosures to governmental agencies. Notwithstanding the provisions of 31-3-111, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

History: En. 18-509 by Sec. 9, Ch. 547, L. 1975; R.C.M. 1947, 18-509.

31-3-122. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to July 1, 1975, do not apply to existing consumer reporting agencies except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

History: En. 18-510 by Sec. 10, Ch. 547, L. 1975; amd. Sec. 3, Ch. 185, L. 1977; R.C.M. 1947, 18-510.

31-3-123. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under 31-3-122 during normal business hours and on reasonable notice.

(2) The disclosures required under 31-3-122 shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to 31-3-122.

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

History: En. 18-511 by Sec. 11, Ch. 547, L. 1975; R.C.M. 1947, 18-511.

31-3-124. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

History: En. 18-512 by Sec. 12, Ch. 547, L. 1975; R.C.M. 1947, 18-512.

31-3-125. Fees for disclosures to consumers. A consumer reporting agency shall make all disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the department of business regulation in accordance with the Montana Administrative Procedure Act.

History: En. 18-513 by Sec. 13, Ch. 547, L. 1975; R.C.M. 1947, 18-513.

31-3-126. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up-to-date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up-to-date if the current public record status of the item at the time of the report is reported.

History: En. 18-514 by Sec. 14, Ch. 547, L. 1975; R.C.M. 1947, 18-514.

31-3-127 through 31-3-130 reserved.

31-3-131. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after the consumer learned of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

History: En. 18-515 by Sec. 15, Ch. 547, L. 1975; amd. Sec. 4, Ch. 185, L. 1977; R.C.M. 1947, 18-515.

31-3-132 through 31-3-140 reserved.

31-3-141. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person who furnishes information to a consumer reporting agency which is false or furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

History: En. 18-516 by Sec. 16, Ch. 547, L. 1975; R.C.M. 1947, 18-516.

31-3-142. Civil liability for willful noncompliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-517 by Sec. 17, Ch. 547, L. 1975; R.C.M. 1947, 18-517.

31-3-143. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-518 by Sec. 18, Ch. 547, L. 1975; R.C.M. 1947, 18-518.

31-3-144 through 31-3-150 reserved.

31-3-151. Jurisdiction — venue. A consumer may bring suit in any district court in Montana.

History: En. 18-519 by Sec. 19, Ch. 547, L. 1975; R.C.M. 1947, 18-519.

31-3-152. Rules. The department of business regulation shall enforce this part and promulgate rules necessary to carry out the intent of this part.

History: En. 18-520 by Sec. 20, Ch. 547, L. 1975; R.C.M. 1947, 18-520.

31-3-153. Violation. For the purposes of this part, a violation of this law would be in violation of Title 30, chapter 14, part 1.

History: En. 18-521 by Sec. 21, Ch. 547, L. 1975; R.C.M. 1947, 18-521.

Part 2

Debt Adjusting

31-3-201. Definitions. As used in this part, the following words and terms shall have the following meanings unless the context clearly requires a different meaning:

(1) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management, or debt-pooling service or the holding of oneself out by words of similar import as providing services to debtors in the management of their debts and contracting with the debtor for a fee to:

(a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor; or

(b) receive from the debtor and disperse to his creditors any money or other thing of value.

(2) "Person" means an individual, corporation, partnership, trust, firm, association, or other legal entity.

History: En. Sec. 1, Ch. 300, L. 1969; R.C.M. 1947, 18-401.

31-3-202. Debt adjusting prohibited — penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than 6 months, or both.

History: En. Sec. 2, Ch. 300, L. 1969; R.C.M. 1947, 18-402.

31-3-203. Exemptions. Section 31-3-202 shall not apply to:

(1) those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) those situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are 10% of the amounts as paid by the debtor;

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969; amd. Sec. 2, Ch. 185, L. 1977; R.C.M. 1947, 18-403.

TITLE 32

FINANCIAL INSTITUTIONS

Ch.
1. Banks and Trust Companies.
2. Building and Loan Associations.
3. Credit Unions.
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Part 1

General Provisions — Definitions

32-1-101. Short title — application. Parts 1 to 5, inclusive, of this chapter shall be known as the "Bank Act" and shall be applicable to all corporations and persons specified in 32-1-102 and to such other corporations as shall subject themselves to special provisions and sections thereof and to such other persons, partnerships, or corporations who shall by violating any of its provisions become subject to the penalties provided therein.

History: En. Sec. 1, Ch. 89, L. 1927; re-en. Sec. 6014.1, R.C.M. 1935; R.C.M. 1947, 5-101.

32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation which has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt, provided that nothing herein applies to or includes money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for such purpose.

(4) Banks are divided into the following classes:
(a) commercial banks;
(b) savings banks;
(c) trust companies;
(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

History: En. Sec. 2, Ch. 89, L. 1927; re-en. Sec. 6014.2, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1977; R.C.M. 1947, 5-102.

32-1-103. Foreign corporations. Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state and, for that purpose, may maintain offices in this state and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this chapter as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the department.

History: En. Sec. 31, Ch. 89, L. 1927; re-en. Sec. 6014.35, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-510.

32-1-104. Number of persons necessary to form corporation. Corporations may be formed by any number of natural persons not less than three under the laws of this state to conduct, as provided in this chapter and not otherwise, any one or more or all of the businesses mentioned in 32-1-102.

History: En. Sec. 3, Ch. 89, L. 1927; re-en. Sec. 6014.3, R.C.M. 1935; R.C.M. 1947, 5-103.

32-1-105. Commercial bank defined. The term "commercial bank" means any bank authorized by law to:

(1) receive deposits of money;

(2) deal in commercial paper or make loans thereon;

(3) lend money on real or personal property;

(4) discount bills, notes, or other commercial papers; and

(5) buy and sell securities, gold and silver bullion, foreign coins, or bills of exchange.

History: En. Subd. a, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.4, R.C.M. 1935; R.C.M. 1947, 5-104.

32-1-106. Savings bank defined. The term "savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors and which may:

(1) loan and invest the funds thereof;

(2) receive deposits of money; loan, invest, and collect the same with interest; and repay depositors with or without interest;

(3) invest said funds and moneys in such property, securities, and obligations as may be prescribed by this chapter; and

(4) declare and pay:

(a) dividends on its general deposits; and

(b) a stipulated rate of interest on deposits made for a stated period or upon special terms.

History: En. Subd. b, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.5, R.C.M. 1935; R.C.M. 1947, 5-105.

32-1-107. Trust company defined — purposes for which may be formed. The term "trust company" means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon or to allow such interest thereon as may be agreed upon;

(2) to accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;

(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute such legal trusts in regard to the same on such terms as may be declared, established, or agreed upon in regard thereto;

(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;

(5) to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the

management of such property and generally to have and exercise such powers as are usually had and exercised by trust companies;

(6) to act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;

(7) to loan money upon unencumbered real estate, collateral, or personal security and execute and issue notes and debentures payable at a future date and to pledge its mortgages upon real estate and other securities as security therefor;

(8) to buy and sell:

(a) government, state, county, municipal, and other bonds;

(b) all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities; and

(c) gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange;

(9) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors; to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, securities, and other valuable and personal property; to collect coupons, interest, and dividends on said above-described securities; and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

History: En. Subd. c, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.6, R.C.M. 1935; amd. Sec. 18, Ch. 293, L. 1975; R.C.M. 1947, 5-106.

32-1-108. Investment company defined — purposes for which may be formed. The term "investment company" means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon or to allow such interest as may be agreed upon and to issue and sell its contracts or certificates of indebtedness, directly or through an agent or broker, bearing fixed rates of interest, in whole or in part, with participation or nonparticipation in the profits of the corporation and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates;

(2) to buy and sell government, state, county, municipal, and other bonds and all kinds of negotiable and nonnegotiable and commercial paper, stocks, and other investment securities;

(3) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on securities described in (2).

History: En. Subd. d, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.7, R.C.M. 1935; R.C.M. 1947, 5-107.

32-1-109. Definitions. Unless the context requires otherwise the following definitions apply:

(1) "Board" means the state banking board provided for in 2-15-1803.

(2) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(3) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(4) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(5) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(6) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(7) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(8) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(9) "Time deposits" means all deposits, the payment of which cannot legally be required within 30 days.

(10) "Undivided profits" means the credit balance of the profit and loss account of a bank.

History: En. Sec. 5, Ch. 89, L. 1927; re-en. Sec. 6014.9, R.C.M. 1935; amd. Sec. 1, Ch. 431, L. 1975; R.C.M. 1947, 5-109.

32-1-110. Punishment. When no other punishment is provided, a person willfully or knowingly violating parts 1 through 5 of this chapter is guilty of a misdemeanor. Upon information furnished by the department, the attorney general shall sue to enforce parts 1 through 5 of this chapter.

History: En. Sec. 143, Ch. 89, L. 1927; re-en. Sec. 6014.153, R.C.M. 1935; amd. Sec. 61, Ch. 431, L. 1975; R.C.M. 1947, 5-1123.

32-1-111. Attachments prohibited. No property owned by any bank organized under the laws of the state of Montana shall be subject to attachment.

History: En. Sec. 96, Ch. 89, L. 1927; re-en. Sec. 6014.107, R.C.M. 1935; R.C.M. 1947, 5-1023.

Part 2

Functions of State Banking Board and Department of Business Regulation

32-1-201. State banking board — secretary — meetings — per diem. (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold regular meetings each quarter at a fixed date and time at the office of the department. Special meetings may be called by the chairman at any time upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members, except the chairman, shall be paid $25 a day or any part thereof devoted to the performance of their duties and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of their duties. The costs and expenses of the board shall be legitimate charges of the department.

History: En. Sec. 3, Ch. 420, L. 1973; amd. Sec. 11, Ch. 71, L. 1977; amd. Sec. 2, Ch. 453, L. 1977; R.C.M. 1947, 5-609.

32-1-202. Powers and duties of board. The state banking board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of the department of business regulation as the duties and powers relate to banking.

History: En. Sec. 4, Ch. 420, L. 1973; amd. Sec. 22, Ch. 431, L. 1975; amd. Sec. 12, Ch. 71, L. 1977; R.C.M. 1947, 5-610.

32-1-203. Rules adopted by board — new banks. The board shall adopt rules necessary for the administration of 32-1-201 through 32-1-206 in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest.

History: En. Sec. 5, Ch. 420, L. 1973; amd. Sec. 23, Ch. 431, L. 1975; amd. Sec. 13, Ch. 71, L. 1977; R.C.M. 1947, 5-611.

32-1-204. Hearings — notice. (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than 30 days and not later than 90 days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations, or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

History: En. Sec. 6, Ch. 420, L. 1973; amd. Sec. 24, Ch. 431, L. 1975; R.C.M. 1947, 5-612.

32-1-205. Board rules for discovery and hearing procedures. (1) The board shall permit prehearing discovery procedures, including the taking of depositions and the production of documents. In such discovery procedures, the rules of civil procedure for state courts shall furnish guidelines for these purposes. As soon as practicable, the board shall adopt rules regarding discovery procedures, but until this is accomplished, the foregoing shall apply.

(2) In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

History: En. Sec. 7, Ch. 420, L. 1973; R.C.M. 1947, 5-613.

32-1-206. Disqualification of board member — when. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved, competitively or otherwise.

History: En. Sec. 8, Ch. 420, L. 1973; R.C.M. 1947, 5-614.

32-1-207 through 32-1-210 reserved.

32-1-211. Examination and supervision by department. (1) The department shall exercise constant supervision over the books and affairs of all banks doing business in this state.

(2) It shall examine, at least once a year, each of those banks and verify the assets and liabilities of each and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books.

(3) It shall further investigate the methods of operation and conduct of business of the banks and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) It may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank regarding the affairs and business thereof.

(5) It may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by it, the refusal may at once be reported to the district court of the district in which the bank is located, and the court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents, and property it desires to inspect, and in all things aid it in the performance of its duty.

History: En. Sec. 71, Ch. 89, L. 1927; re-en. Sec. 6014.75, R.C.M. 1935; amd. Sec. 30, Ch. 431, L. 1975; R.C.M. 1947, 5-901.

32-1-212. Director and employees not to be interested in banks. Neither the director of the department of business regulation nor any bank examiner may be interested in or a borrower from any state bank, directly or indirectly.

History: En. Sec. 58, Ch. 89, L. 1927; re-en. Sec. 6014.62, R.C.M. 1935; amd. Sec. 20, Ch. 431, L. 1975; amd. Sec. 10, Ch. 71, L. 1977; R.C.M. 1947, 5-604.

32-1-213. Payments to be made by banks, investment companies, and trust companies. For the credit of the general fund of the state, each bank, trust company, or investment company under the supervision of the department shall pay to the state treasurer, on or before June 30 of each year, a supervision fee of $400. An examination fee of 10 cents for each $1,000 of total assets as of the date of the examination shall be paid at the conclusion of the examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.82, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-908.

32-1-214. Special examination defined. A special examination is an examination made by the department otherwise than in the ordinary routine of the department because, in its opinion, the condition of the bank requires the examination or an examination made at the request of the board of directors or stockholders of a bank.

History: En. Sec. 92, Ch. 89, L. 1927; re-en. Sec. 6014.103, R.C.M. 1935; amd. Sec. 35, Ch. 431, L. 1975; amd. Sec. 18, Ch. 71, L. 1977; R.C.M. 1947, 5-1019.

32-1-215. Special examinations and fees. Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the department it is considered necessary, and the special examination shall be charged for at the rate of $100 a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination, and the moneys collected by the department shall be paid to the state treasurer for the credit of the general fund.

History: En. Sec. 2, Ch. 167, L. 1929; re-en. Sec. 6014.84, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971; amd. Sec. 31, Ch. 431, L. 1975; R.C.M. 1947, 5-910.

32-1-216. Examination at request of directors. When requested in writing, upon the authority of a majority of the board of directors of any bank, to make an examination of such bank, the department shall do so.

History: En. Sec. 93, Ch. 89, L. 1927; re-en. Sec. 6014.104, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1020.

32-1-217. Department to examine trusts. It shall be the duty of the department as a part of the examination of trust companies and banks to check all trusts, trust funds, and trust and estate accounts held in the possession and control of the bank or trust company.

History: En. Sec. 98, Ch. 89, L. 1927; re-en. Sec. 6014.109, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1025.

32-1-218. Department to make rules. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and prescribe the form in which banks shall report their assets, liabilities, and reserves.

History: (1)En. Sec. 100, Ch. 89, L. 1927; re-en. Sec. 6014.111, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 20, Ch. 71, L. 1977; Sec. 5-1027, R.C.M. 1947; (2)En. Sec. 91, Ch. 89, L. 1927; re-en. Sec. 6014.102, R.C.M. 1935; amd. Sec. 34, Ch. 431, L. 1975; Sec. 5-1018, R.C.M. 1947; R.C.M. 1947, 5-1018, 5-1027.

32-1-219 through 32-1-230 reserved.

32-1-231. Reports to department of business regulation. (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form which may be prescribed by the department, verified by oath or affirmation of the president, vice-president, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, shall be on the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report shall be transmitted to the department within 5 days after the receipt of a request or requisition for it and in a form the department may require. It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be furnished at the times and in the manner as may be required by the department.

History: En. Secs. 61, 64, Ch. 89, L. 1927; re-en. Secs. 6014.65, 6014.68, R.C.M. 1935; amd. Secs. 25, 170, Ch. 431, L. 1975; R.C.M. 1947, 5-701, 5-704.

32-1-232. Report of declaration of dividend. In addition to the report required by 32-1-231, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report shall be attested as provided in 32-1-231.

History: En. Sec. 62, Ch. 89, L. 1927; re-en. Sec. 6014.66, R.C.M. 1935; amd. Sec. 26, Ch. 431, L. 1975; amd. Sec. 14, Ch. 71, L. 1977; R.C.M. 1947, 5-702.

32-1-233. Special reports to department. In addition to the information obtained from the report required by 32-1-231, the department may also require a bank to furnish a special report in writing, verified as required by 32-1-231, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury and shall be punished accordingly.

History: En. Sec. 63, Ch. 89, L. 1927; re-en. Sec. 6014.67, R.C.M. 1935; amd. Sec. 27, Ch. 431, L. 1975; R.C.M. 1947, 5-703.

32-1-234. Confidentiality — penalties. (1) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, shall be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in them shall be used by the department only in the furtherance of its official duties. The department may exchange information with federal banking departments and with departments of other states and furnish information to the legislative auditor or prosecuting officials who request it for use in pursuit of official duties.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in this subsection, be imparted to any

person not officially associated with the department. The information shall be used by the department only in the furtherance of its official duties, except that the department may exchange information with the federal banking department and departments of other states and may furnish information to prosecuting officials who require it for use in pursuit of official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank shall be removed from office and is also guilty of a felony. Upon conviction he shall be fined not exceeding $1,000 or imprisoned in the state penitentiary not exceeding 5 years or both fined and imprisoned.

History: En. Secs. 65, 85, Ch. 89, L. 1927; re-en. Secs. 6014.69, 6014.96, R.C.M. 1935; amd. Secs. 28, 33, Ch. 431, L. 1975; R.C.M. 1947, 5-705, 5-1012.

32-1-235. Penalty for failure to make report within five days. If any bank neglects to make out or transmit the statements required by this chapter within 5 days after call, it shall be subject to a penalty of $20 for each day in default after the period respectively required by this chapter that it may delay to make and transmit any such statements. Should any bank delay for a period of 1 month to make out and transmit the statements and proofs of publication required by this chapter beyond the period when the same is required to be made or willfully violate any of the provisions of this chapter with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect.

History: En. Sec. 66, Ch. 89, L. 1927; re-en. Sec. 6014.70, R.C.M. 1935; R.C.M. 1947, 5-706.

32-1-236. False statements and entries considered felony. Every officer or other person authorized by this chapter who willfully and knowingly makes any false statement of facts, statement of account, or report and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank and every person authorized by the provisions of this chapter to make statements or reports who willfully and knowingly subscribes or makes any false statement or report is guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for a term of not less than 1 or more than 10 years.

History: En. Sec. 67, Ch. 89, L. 1927; re-en. Sec. 6014.71, R.C.M. 1935; amd. Sec. 15, Ch. 71, L. 1977; R.C.M. 1947, 5-707.

Part 3

Formation and Reorganization

32-1-301. Organization and incorporation — articles of agreement. Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this chapter shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall set forth:

(1) the corporate name of the proposed corporation, which shall not be the name of any other corporation theretofore granted and then doing business of a similar character in this state or any imitation of such name, provided that it shall be lawful to use the name theretofore used by any corporation previously incorpo-

rated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and entirely out of business. No banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association.

(2) the name of the city or town and county in which the principal office of the corporation is to be located;

(3) the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of such shares; the amount of capital stock actually subscribed in good faith at the time of the signing of such articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository thereof until the proposed corporation is fully organized and authorized to engage in business;

(4) the names and places of residence of the several shareholders and the number of shares subscribed by each;

(5) the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each annual meeting, within the limits specified in this chapter, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, within the limits specified in this chapter, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

(6) the purpose for which the association or company is formed, which may be set forth by the use of the general terms herein defined, with reference to each line of business in which the proposed corporation desires to engage.

History: Ap. p. Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1965; Sec. 5-201, R.C.M. 1947; Ap. p. Sec. 2661, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; Sec. 93-100-2, R.C.M. 1947; R.C.M. 1947, 5-201, 93-100-2(part).

32-1-302. Incorporation. (1) The articles of agreement shall be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement.

(2) Upon the presentation of the articles of agreement, together with the application, the department shall ascertain whether the requisite capital of the bank has been subscribed and been paid up in cash. It shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter or whether the public convenience and advantage will be promoted by the opening of the bank. It shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion. The department shall also ascertain from the best sources of information at its command whether the character and general fitness of the persons named as stockholders command confidence of the community in which the bank is proposed to be located.

(3) The expenses of the department in making the examination required by this section shall be paid by the proposed bank, and payment shall be made in advance if required by the department.

(4) All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 2, Ch. 431, L. 1975; R.C.M. 1947, 5-202.

32-1-303. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with 32-1-202 through 32-1-206.

History: En. 5-202.1 by Sec. 3, Ch. 431, L. 1975; amd. Sec. 2, Ch. 71, L. 1977; R.C.M. 1947, 5-202.1.

32-1-304. Rejection of application by department conclusive. In the event the application for a certificate of authorization shall be refused by the department, such action shall be final and conclusive.

History: En. Sec. 7, Ch. 89, L. 1927; re-en. Sec. 6014.11, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-205.

32-1-305. Filing of certificate and articles of agreement. The articles of agreement, together with one of the certificates of authorization issued by the department, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. A certified copy of the articles of agreement, together with the certificate of authorization, shall be filed with the secretary of state. Upon filing with the secretary of state the articles of agreement and the certificate of authorization and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that the corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. This certificate shall be taken by all courts of this state as evidence of the corporate existence of the bank. The persons signing and acknowledging the articles of agreement and their associates and successors are then a body corporate with power of continual succession and by that name they and their successors are entitled to have, possess, and enjoy all the rights and privileges conferred by this chapter.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 4, Ch. 431, L. 1975; R.C.M. 1947, 5-203.

32-1-306. Continual succession of banks. Any bank, trust company, or investment company now existing may at any time, within the period limited for its duration, elect to avail itself of the right of continual succession herein given by filing its intention to do so in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the secretary of state and by paying the legal filing fees therefor. No such corporation shall be allowed to increase its capital stock by such filing without complying with the provisions of this chapter and paying the legal filing fees as in such cases otherwise provided.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; R.C.M. 1947, 5-204.

32-1-307. Amount of capital. (1) The amount of the common and preferred stock of a commercial bank shall not be less than $25,000, and in addition thereto there shall be created a surplus of not less than 10% of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the department for the certificate of authorization hereinabove mentioned.

(2) A commercial bank having its place of business in a city or town of more than 2,000 and less than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $30,000 and a surplus of 10% of the capital stock as hereinbefore provided. A commercial bank having its place of business in a city or town of more than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $50,000 and a surplus of 10% of the capital stock as hereinbefore provided.

(3) The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement and shall be not less than $100,000 or more than $10 million, of which amount at least $100,000 must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the department for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of $100 or such less amount as may be provided in the articles of incorporation, provided that this chapter shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; re-en. Sec. 6014.12, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-206.

32-1-308. Bylaws. (1) The persons signing the articles of agreement shall at their first meeting adopt bylaws for the government of the corporation, which bylaws may provide for:

(a) the time, place, and manner of calling and conducting the meetings of the corporation;

(b) the number of stockholders constituting a quorum;

(c) the mode of voting by proxy;

(d) the time of the annual election of directors and the mode and manner of giving notice thereof;

(e) the duties of officers;

(f) the manner of election and the tenure of office of all officers other than the directors;

(g) suitable penalties for violation of bylaws, not exceeding in any case $100 for any one offense.

(2) The bylaws adopted must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws, which book shall be open to the inspection of the public during the office hours of each day except holidays. A copy of the bylaws shall also be transmitted to the department. The bylaws may be repealed or amended or new bylaws be adopted at the annual meetings or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors.

History: En. Sec. 13, Ch. 89, L. 1927; re-en. Sec. 6014.17, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-211.

32-1-309 through 32-1-320 reserved.

32-1-321. Calling of first meeting — cancellation of certificate. When the formation of the corporation is completed under the provisions of this chapter by the issuance of the certificate of incorporation by the secretary of state, any three such incorporators signing the articles of agreement may call the first meeting of the corporation at such time and place as they may appoint by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located at least 5 days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within 30 days from the date of the certificate of incorporation or if such corporation shall fail to commence the business for which it is incorporated within 90 days from the date of the issuance of the certificate of authorization, the department is authorized to cancel such certificate of authorization.

History: En. Sec. 9, Ch. 89, L. 1927; re-en. Sec. 6014.13, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-207.

32-1-322. Board of directors — qualifications, tenure, and vacancies. (1) The affairs of the bank shall be managed by a board of directors, not less than 3 or more than 11 in number, all of whom shall be stockholders of the bank and citizens of the United States, and of whom at least two-thirds must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this chapter, and that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election.

History: En. Sec. 10, Ch. 89, L. 1927; re-en. Sec. 6014.14, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1957; amd. Sec. 5, Ch. 431, L. 1975; R.C.M. 1947, 5-208.

32-1-323. Elections — how conducted. (1) All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name for as many persons as there are directors to be elected or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal or to distribute them on the same principle among as many candidates as he shall think fit.

(2) The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor or of a person of unsound mind may be represented and voted by his guardian and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings unless the pledgor appoints the pledgee as a proxy in accordance with the bylaws of the company.

(3) The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it

deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time if for any reason there is not a quorum present or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting.

(4) All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

History: En. Sec. 23, Ch. 89, L. 1927; re-en. Sec. 6014.27, R.C.M. 1935; R.C.M. 1947, 5-502.

32-1-324. Director's shares of stock. No person shall be eligible for election as director of a bank unless he is a stockholder of the bank, owning in his own right shares thereof of the par value of at least $1,000, and every person elected to be a director, who after such election shall cease to be the owner in his own right of the amount of such stock aforesaid or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the department of such sale or hypothecation, and such director may be removed from the office of director by the department, unless such disability be removed by the acquisition of other shares of stock or release of such pledge within the time prescribed by the department.

History: En. Sec. 11, Ch. 89, L. 1927; re-en. Sec. 6014.15, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-209.

32-1-325. Selection of officers and employees — meetings and minutes. (1) The board of directors of a bank must hold a meeting at least once a month.

(2) The board of directors may elect a president, one or more vice-presidents, cashier and one or more assistant cashiers, and other officers and employees which they may from time to time consider to be to the best interest of the bank and fix their compensation. The president and at least one vice-president shall be chosen from the board of directors.

(3) The board of directors shall also elect a secretary who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. The minutes shall be read and approved at the following meeting of the board of directors, and the minutes of the following meeting shall show that fact. The minute book shall be kept in the office of the bank at all times and shall be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 89, L. 1927; re-en. Sec. 6014.16, R.C.M. 1935; amd. Sec. 6, Ch. 431, L. 1975; R.C.M. 1947, 5-210.

32-1-326 through 32-1-330 reserved.

32-1-331. Keeping list of stockholders. Every bank shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof and for their use, a book containing a list of stockholders in such corporation and the number of shares of stock held by each.

History: En. Sec. 33, Ch. 89, L. 1927; re-en. Sec. 6014.37, R.C.M. 1935; R.C.M. 1947, 5-512.

32-1-332. Transfer of stock. The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the corporation or a new certificate issued to the person to whom it has been transferred.

History: En. Sec. 22, Ch. 89, L. 1927; re-en. Sec. 6014.26, R.C.M. 1935; R.C.M. 1947, 5-501.

32-1-333. Stockholders' liability — effect of insolvency on transfers of stock. (1) The stockholders of every bank shall be severally and individually liable, equally and ratably and not one for the other, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No person holding stock as executor, administrator, guardian, or trustee and no person holding such stock as a pledge or collateral security shall be personally subject to any liability as stockholders in such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator, intestate, ward, or the person interested in such trust fund would have been liable if he had been living or competent to act and hold the stock in his own name.

(2) The stockholders in any bank who shall have transferred their shares or registered the transfer thereof within 6 months before the failure of said bank to meet its obligations or with knowledge of such impending failure shall be liable to the same extent as if they had made no such transfer to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way recourse which such stockholder might otherwise have against those in whose name such shares are registered at the time of such failure.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-401.

32-1-334. Waiver of stockholders' liability. No bank shall make any contract with any of its depositors whereby the stockholders' liability provided for by this chapter is in any manner waived, and if any such contract shall be so made, such contract shall be void.

History: En. Sec. 42, Ch. 89, L. 1927; re-en. Sec. 6014.46, R.C.M. 1935; R.C.M. 1947, 5-521.

32-1-335. Purchase or loan of own capital stock prohibited. No bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 36, Ch. 89, L. 1927; re-en. Sec. 6014.40, R.C.M. 1935; R.C.M. 1947, 5-515.

32-1-336. Nonassessable preferred stock — authorization for issuing. Any domestic commercial bank, savings bank, trust company, or investment company may amend its articles of incorporation or articles of agreement by providing for the issuance of nonassessable preferred stock, and any such bank or company hereafter formed may provide in its articles for the issuance of such stock. Such amendment may be made by the adoption of a resolution by a vote of persons holding a majority of the stock of such corporation at a meeting held after 30 days' notice stating the purpose and the time and place of holding such meeting, either mailed or published in the manner provided in 32-1-354, and by filing a certified copy of such resolution in the office of the county clerk and recorder of the county in which the principal place of business is located and a certified copy thereof in the office of the secretary of state, certified and authenticated as provided in 32-1-355.

History: En. Sec. 1, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.1, R.C.M. 1935; R.C.M. 1947, 5-1127.

32-1-337. Preferred stock not subject to double liability or other responsibility. Such preferred stock shall not impose any double liability upon the subscriber or holder or subject the holder to responsibility for any contract, debt, or engagement of the issuing corporation.

History: En. Sec. 2, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.2, R.C.M. 1935; R.C.M. 1947, 5-1128.

32-1-338. Manner of issuing preferred stock. The preferred stock may be issued and sold upon terms and conditions approved by the department or required for the purchase of the stock by an agency or quasi-agency of the federal government.

History: En. Sec. 3, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.3, R.C.M. 1935; amd. Sec. 63, Ch. 431, L. 1975; R.C.M. 1947, 5-1129.

32-1-339. Right of examination by stockholder. No stockholder of any bank incorporated under the laws of this state who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers, but any such stockholder shall have the right to inspect during business hours the general statement book showing the general assets and liabilities of such bank.

History: En. Sec. 108, Ch. 89, L. 1927; re-en. Sec. 6014.119, R.C.M. 1935; R.C.M. 1947, 5-1035.

32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by the vote of two-thirds of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital, surplus, and undivided profits are not reduced by the issuance of the new stock.

(5) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. Its action shall be final, and written notice of it shall be given to the bank.

(6) If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the secretary of state. Upon the filing with the secretary of state, the increase becomes effective.

History: En. Sec. 97, Ch. 89, L. 1927; re-en. Sec. 6014.108, R.C.M. 1935; amd. Sec. 36, Ch. 431, L. 1975; R.C.M. 1947, 5-1024.

32-1-341 through 32-1-350 reserved.

32-1-351. Increase or diminution of capital stock. Any bank now organized and existing and which may hereafter be organized may increase or diminish its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for its purposes within the limits prescribed by this chapter.

History: En. Sec. 14, Ch. 89, L. 1927; re-en. Sec. 6014.18, R.C.M. 1935; R.C.M. 1947, 5-212.

32-1-352. Change of corporate name authorized. The corporate name of any bank now organized and existing or which may hereafter be organized may be altered, changed, or amended as in this part provided.

History: En. Sec. 15, Ch. 89, L. 1927; re-en. Sec. 6014.19, R.C.M. 1935; R.C.M. 1947, 5-213.

32-1-353. Change of place of business and number of directors authorized. A bank may, upon approval of the board, change its principal place of business from one place to another in the same county or in an adjacent county within this state and may increase or diminish the number of trustees or directors in the manner provided in 32-1-354 through 32-1-356.

History: En. Sec. 16, Ch. 89, L. 1927; re-en. Sec. 6014.20, R.C.M. 1935; amd. Sec. 7, Ch. 431, L. 1975; R.C.M. 1947, 5-214.

32-1-354. Procedure for changes. Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock or for changing its corporate name or for changing its principal place of business, it shall be the duty of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, for 6 successive weeks and to deposit a written or printed copy thereof in the post office, addressed to each stockholder at his usual place of residence, at least 6 weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital or the name to which it is proposed that the bank shall be changed or to the new location or place to which the principal place of business shall be changed, and a vote of at least two-thirds of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock or to change its corporate name or to change its principal place of business.

History: En. Sec. 17, Ch. 89, L. 1927; re-en. Sec. 6014.21, R.C.M. 1935; R.C.M. 1947, 5-215.

32-1-355. Certificate of proceedings — contents and effect. If, at the time and place specified in the notice provided for in 32-1-354, stockholders appear in person or by proxy representing not less than two-thirds of all the shares of stock of the corporation and organize by choosing one of the trustees or directors chairman of the meeting and also a suitable person for secretary and proceed to a vote of those present in person or by proxy and if two-thirds of the votes representing all the outstanding capital stock have been cast in favor of increasing or diminishing the amount of capital stock or of changing its corporate name or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation or the change in the principal place of business shall be made out, signed, and verified by the affidavit of the chairman and be countersigned by the secretary, and the certificate shall be acknowledged by the chairman. The certificate shall then be sent to the department which shall within 30 days of receipt either approve or reject the application for change. The action of the department on the application is final. If it approves the certificate, it shall notify the bank, at which time the certificate shall be filed in the office of the county clerk and recorder of the county in which the bank is located and in the office of the secretary of state. Upon the filing, the change is effective.

History: En. Sec. 18, Ch. 89, L. 1927; re-en. Sec. 6014.22, R.C.M. 1935; amd. Sec. 8, Ch. 431, L. 1975; R.C.M. 1947, 5-216.

32-1-356. Procedure for change in number of directors. (1) A state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this chapter, shall constitute the board for the year, with all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two, within the limits specified in this chapter, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. However, the number of directors may not at any time be less than 3 or more than 11.

(2) When a bank or trust company decides to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of the meeting must be deposited in the post office, addressed to each stockholder of record entitled to vote at the meeting under the articles of incorporation or amendments to them and the laws and constitution of Montana at his last known place of residence, at least 10 days previous to the date set for the holding of the meeting. In addition, the notice must be published once a week for 2 consecutive weeks in a newspaper published in the county where the principal place of business of the corporation is situated. If no newspaper is published in the county, it is not necessary to publish the notice. However, the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If, at the time and place specified in the notice of the special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation appear in person or by proxy and vote in favor of the amendment, a certificate of the proceedings showing a compliance of the provisions of this chapter and the amendment relative to the number of directors shall be prepared, certified, and sworn to and filed with the department. The department shall, within 30 days after the receipt of the certificate, either approve or reject the amendment. The action of the department on the amendment is final. If it approves the amendment, it shall notify the bank, whereupon the certificate with the department's approval attached to it shall be filed in the office of the county clerk and recorder of the county in which the bank is situated and a certified copy of it shall be filed in the office of the secretary of state. Upon the filing of the certified copy with the secretary of state, the amendment becomes effective.

History: En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; re-en. Sec. 6014.23, R.C.M. 1935; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965; amd. Sec. 9, Ch. 431, L. 1975; R.C.M. 1947, 5-217.

32-1-357 through 32-1-360 reserved.

32-1-361. Change from state to national bank. Any bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when stockholders owning two-thirds of the stock of the bank have voted to become such corporation or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States or when a majority of the directors of the bank, having been authorized in their discretion to make the change, shall, by a vote of the majority, decide to become such corporation. The cashier of the bank shall publish notice thereof for 30 days in the newspaper which the directors select and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders and notify the department that the bank has decided to become a corporation under the laws of the United States.

History: En. Sec. 75, Ch. 89, L. 1927; re-en. Sec. 6014.86, R.C.M. 1935; amd. Sec. 32, Ch. 431, L. 1975; amd. Sec. 17, Ch. 71, L. 1977; R.C.M. 1947, 5-1002.

32-1-362. National bank powers extended to state banks. With the consent of the department, every bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department may prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by this section, provided that such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

History: En. Sec. 1, Ch. 119, L. 1973; R.C.M. 1947, 5-1002.1.

32-1-363. Surrender of charter by state bank. (1) Any bank which will become a corporation for carrying on the business of banking under the laws of the United States shall cease to be a corporation under the laws of this state, except that for the term of 3 years thereafter its corporate existence shall be deemed to continue for the purposes of prosecuting and defending suits by and against it and of enabling it to close its concerns and to dispose of and convey its property.

(2) The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue

to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect such organization by signing the articles of association and the organization certificate and adopting such regulations as may be just and proper and not inconsistent with the acts of congress in relation thereto.

(3) Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof.

History: En. Sec. 76, Ch. 89, L. 1927; re-en. Sec. 6014.87, R.C.M. 1935; R.C.M. 1947, 5-1003.

32-1-364. Increase or reduction of capital stock. The directors of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders or may retain such portion of such surplus as they may deem necessary. In case of an increase of the capital stock under the provisions of the acts of congress, the directors may charge the shares of such increased capital stock with a like amount to place the whole of such capital stock on an equality and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto and as are provided in their articles of association and the acts of congress. New directors may be chosen at such time and in the manner provided in the articles of association and the acts of congress.

History: En. Sec. 77, Ch. 89, L. 1927; re-en. Sec. 6014.88, R.C.M. 1935; R.C.M. 1947, 5-1004.

32-1-365. Certificate of change to national bank. (1) When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States.

(2) When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all the property of such bank shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the national bank corporation into which such bank shall have been converted.

History: En. Sec. 78, Ch. 89, L. 1927; re-en. Sec. 6014.89, R.C.M. 1935; R.C.M. 1947, 5-1005.

32-1-366 through 32-1-370 reserved.

32-1-371. Consolidation or merger of banks. (1) The words "bank" or "banks" as used in this section include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) Any two or more banks doing business in this state may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Such consolidation or merger, before it becomes effective, must be ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its

capital stock outstanding, provided that the capital stock of such consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

(3) Upon such consolidation or merger, the corporate franchise, corporate life, being, and existence and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of such consolidating or merging bank and banks shall, without the necessity of any instrument of transfer, become consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank, and such bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to such consolidation or merger and by which will or instrument such consolidating or merging bank was nominated by the maker to such office.

History: En. Sec. 94, Ch. 89, L. 1927; amd. Sec. 1, Ch. 108, L. 1931; re-en. Sec. 6014.105, R.C.M. 1935; amd. Sec. 171, Ch. 431, L. 1975; amd. Sec. 19, Ch. 71, L. 1977; R.C.M. 1947, 5-1021.

32-1-372. Branch bank prohibited — exceptions. (1) No bank may maintain any branch bank, receive deposits, or pay checks except over the counter of and in its own banking house, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. The distance of the facility from the main banking house may not exceed 1,000 feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house.

(3) (a) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized shall not be subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(b) A satellite terminal other than a point-of-sale terminal may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved.

History: En. Sec. 101, Ch. 89, L. 1927; re-en. Sec. 6014.112, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 22, Ch. 503, L. 1977; R.C.M. 1947, 5-1028.

32-1-373. Banks may join federal reserve bank. Any bank is hereby authorized and empowered to join or associate itself with the federal reserve bank, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such banks or branch thereof or from investing any part of its capital or surplus in the stock of such bank, in accordance with the terms and provisions of the act of congress creating such association. Any bank joining or associating itself with such bank shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of congress creating the same and the rules of such federal reserve bank.

History: En. Sec. 28, Ch. 89, L. 1927; re-en. Sec. 6014.32, R.C.M. 1935; R.C.M. 1947, 5-507.

32-1-374. Reorganization of national bank as state bank. Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth therein the written consent of such stockholders. Upon the filing of said articles as provided by law and upon the approval of the department, such bank shall be deemed to be reorganized under this chapter, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and become the property of such reorganized state bank, subject to all liabilities of such national bank not liquidated before such reorganization.

History: En. Sec. 79, Ch. 89, L. 1927; re-en. Sec. 6014.90, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1006.

Part 4

Operation and Regulation

32-1-401. Bank advertising before issuance of charter. It shall be unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the department, as herein provided. Any such individual or member of such firm or officer of any such corporation so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

History: En. Sec. 107, Ch. 89, L. 1927; re-en. Sec. 6014.118, R.C.M. 1935; R.C.M. 1947, 5-1034.

32-1-402. When advertising as bank prohibited — trade names restricted. (1) A person, firm, company, partnership, or corporation, either domestic or foreign, not subject to the supervision of the department and not required by the provisions of this chapter to report to it and which has not received a certificate to do a banking business from the department, may not:

(a) advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit therefor; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) That person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on them an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) That person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) A person, firm, company, partnership, or corporation, domestic or foreign, not subject to the supervision of the department and not required by the provisions of this chapter to report to it and which has not received from the department a certificate to do a banking business, may not transact business under a name or title which contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company". Nothing contained in this section shall prohibit use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, and such use of the word "bank" is hereby authorized.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require.

History: Ap. p. Sec. 29, Ch. 89, L. 1927; re-en. Sec. 6014.33, R.C.M. 1935; amd. Sec. 14, Ch. 431, L. 1975; amd. Sec. 6, Ch. 71, L. 1977; Sec. 5-508, R.C.M. 1947; Ap. p. Sec. 1, Ch. 217, L. 1977; Sec. 5-508.1, R.C.M. 1947; R.C.M. 1947, 5-508, 5-508.1.

32-1-403. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that he or it is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

(2) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section must transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section.

History: En. Sec. 30, Ch. 89, L. 1927; re-en. Sec. 6014.34, R.C.M. 1935; amd. Sec. 15, Ch. 431, L. 1975; R.C.M. 1947, 5-509.

32-1-404 through 32-1-410 reserved.

32-1-411. Extent assets may be pledged. No bank, banker, or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 ½ times the amount borrowed (except as otherwise authorized by the department).

History: En. Sec. 99, Ch. 89, L. 1927; re-en. Sec. 6014.110, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1026.

32-1-412. Borrowing money — limitations. (1) A bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. At no time shall the bills payable and rediscounts of a bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) A bank may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

History: (1)En. Sec. 110, Ch. 89, L. 1927; re-en. Sec. 6014.121, R.C.M. 1935; amd. Sec. 37, Ch. 431, L. 1975; Sec. 5-1037, R.C.M. 1947; (2)En. Sec. 54, Ch. 89, L. 1927; re-en. Sec. 6014.58, R.C.M. 1935; amd. Sec. 19, Ch. 431, L. 1975; Sec. 5-533, R.C.M. 1947; R.C.M. 1947, 5-533, 5-1037.

32-1-413. Borrowing money for capital purposes — status of capital. Notwithstanding any other provision of law, any commercial bank, savings bank, trust company, or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the department and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company, or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company, or investment company to any person, partnership, or corporation and for the purpose of determining the maximum amount of money which such bank may borrow and for all other purposes of bank capital as may be required by law, except that the money so borrowed shall not in any event be considered in ascertaining the value and assessment of shares of any bank for the purpose of taxation.

History: En. Sec. 1, Ch. 16, Ex. L. 1933; re-en. Sec. 6017.1, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1967; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1130.

32-1-414. No certificate of deposit to issue for borrowed money. No bank shall issue its certificate of deposit for the purpose of borrowing money or make partial payments upon any certificate of deposit.

History: En. Sec. 111, Ch. 89, L. 1927; re-en. Sec. 6014.122, R.C.M. 1935; R.C.M. 1947, 5-1038.

32-1-415 through 32-1-420 reserved.

32-1-421. Investment of capital of savings banks. (1) The term "savings bank" as used in this section shall mean any bank organized to do the business specified in 32-1-106.

(2) At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited therein must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned or unencumbered real estate worth at least double the amount to be secured. The remainder may be invested in the aforesaid character of securities or in approved personal securities, but no loan must be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and no loan upon personal security shall be made to any one person or partnership to an amount exceeding $10,000.

(3) No president, vice-president, director, or other officer or servant of a savings bank shall directly or indirectly borrow any of the funds of such bank or of its deposits or in any manner use the same in his private affairs or business, nor shall any director receive any pay, salary, or emolument until such interest as the directors shall have determined to allow depositors shall have been provided for in accordance with the regulations of the corporation.

(4) The real estate which such corporation may lawfully purchase, hold, and convey is:

(a) such as may be necessary for the proper transaction of its business, not exceeding in value $50,000;

(b) such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this chapter or given as security for money loaned or advanced;

(c) such as is purchased at the sale on judgment or decree obtained or rendered on money so loaned or advanced.

(5) Savings banks organized under the provisions of this chapter must not purchase, hold, or convey real estate in any other case or for any other purpose than herein specified and shall not buy or sell any personal property, except such as may

be necessary for the proper transaction of its business or such as may have been pledged, mortgaged, or assigned to it to secure moneys loaned or advanced.

History: En. Sec. 24, Ch. 89, L. 1927; re-en. Sec. 6014.28, R.C.M. 1935; R.C.M. 1947, 5-503.

32-1-422. Restriction on investment in corporate stock. No commercial or savings bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within 6 months thereafter, if it can be sold for the amount of the claim of such bank against it. All capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within 1 year after such purchase or acquisition, or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 39, Ch. 89, L. 1927; re-en. Sec. 6014.43, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1973; R.C.M. 1947, 5-518.

32-1-423. Real estate which banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate which:

(a) is necessary for the proper transaction of its business, but it shall not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) is mortgaged to it in good faith by way of security for loans previously made or moneys due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) of this section may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate shall be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

History: En. Sec. 25, Ch. 89, L. 1927; re-en. Sec. 6014.29, R.C.M. 1935; amd. Sec. 12, Ch. 431, L. 1975; amd. Sec. 4, Ch. 71, L. 1977; R.C.M. 1947, 5-504.

32-1-424. Investments of financial institutions. (1) Trust and investment companies may lease, purchase, hold, and convey all such real or personal property as may be necessary to carry on their authorized business, as well as such real or personal property as the board of directors may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.

(2) The board of directors of any such corporation is authorized to invest the capital and assets of said corporation and keep the same invested in securities to be approved by the board, and it shall be lawful for the board to make such investments of its capital and assets and of the funds accumulated by its business,

including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the same, or bonds or obligations of the United States.

(3) Notwithstanding other provisions of the law, it shall be lawful for any bank, trust company, investment company and other financial institutions operating under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the Home Owners' Loan Corporation, in debentures issued by the federal housing administrator, and in obligations of National Mortgage Associations.

History: (1), (2)En. Sec. 26, Ch. 89, L. 1927; re-en. Sec. 6014.30, R.C.M. 1935; Sec. 5-505, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 5-505, 35-142(part).

32-1-425. Definitions. For the purposes of 32-1-426 and 32-1-427, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting in, or constructive; executor; administrator; guardian; committee; conservator; curator; tutor; custodian; nominee; receiver; trustee in bankruptcy; assignee for the benefit of creditors; partner; agent; officer of any corporation, public or private; public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

History: En. 5-1601 by Sec. 3, Ch. 278, L. 1977; R.C.M. 1947, 5-1601.

32-1-426. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 30-8-102. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or a custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on July 1, 1977, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

History: En. 5-1602 by Sec. 4, Ch. 278, L. 1977; R.C.M. 1947, 5-1602.

32-1-427. Fiduciaries — deposit of securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 32-1-425 and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on July 1, 1977, or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

History: En. 5-1603 by Sec. 5, Ch. 278, L. 1977; R.C.M. 1947, 5-1603.

32-1-428 through 32-1-429 reserved.

32-1-430. Authority of state banks to make real estate loans. A bank in this state has from time to time the same authority to make loans upon real estate which may be given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

32-1-431. Limitation on real estate loans. (1) A bank organized under the laws of this state may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties, and may purchase an obligation so secured when the entire amount of the obligation is sold to the bank. The amount of the loan may not exceed 50% of the appraised value of the real estate offered as security, and the loan may not be made for a longer period than 5 years, except that:

(a) the loan may be made in an amount not to exceed 60% of the appraised value of the real estate offered as security and for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust, or similar instrument, under the terms of which the installment payments are sufficient to amortize 40% or more of the principal of the loan within not more than 20 years; and

(b) a bank may not make those loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of 60% of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed 6 months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, are not loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans. A bank may not invest in or be liable on any of those loans in an aggregate amount in excess of 50% of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses, which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment has been made by a federal reserve bank or in which an agency of the federal government cooperated or purchased a participation in, are not subject to the restrictions or limitations of this section upon loans secured by real estate.

(4) The limitations and restrictions imposed by this section do not prevent the renewal or extension of loans made before February 18, 1941, and do not apply to real estate loans which are insured under the provisions of any act of congress. Those limitations and restrictions do not apply to the making, extension, or renewal of any loans made under subchapter II of the act of congress known as the Servicemen's Readjustment Act of 1944 or any amendment or supplement to that act.

(5) This section, however, does not prevent a bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the real estate or from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. These provisions do not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of the bank, the subsequent liens are necessary further to secure the payment of any debts and save the bank from loss.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

32-1-432. Limitations on loans. (1) (a) The total loans to a person, partnership, or corporation by a bank, including loans to a partnership and to the several members thereof, shall at no time exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed.

(c) The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of 100% of the amount loaned or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the several members of a firm, partnership, or unincorporated association to the loaning bank shall be included in the liabilities of the firm, partnership, or unincorporated association. That portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible shall be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

History: En. Sec. 44, Ch. 89, L. 1927; re-en. Sec. 6014.48, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973; amd. Sec. 17, Ch. 431, L. 1975; R.C.M. 1947, 5-523.

32-1-433. Limit on amount of bond issue. No commercial bank may purchase, agree to purchase, or underwrite any bond issue in excess of 10% of its assets, except bonds of the United States, of the state of Montana, or of the cities, towns, counties, or school districts of this state.

History: En. Sec. 38, Ch. 89, L. 1927; re-en. Sec. 6014.42, R.C.M. 1935; amd. Sec. 7, Ch. 71, L. 1977; R.C.M. 1947, 5-517.

32-1-434. Financial institutions authorized to obtain insurance and make loans when approved by federal housing administrator. Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate and/or restricting the term of any such loan and/or restricting the rate of interest on any such loan, it shall be lawful for any corporation, bank, trust company, insurance company, investment company, and any other financial institution which has been approved as a mortgagee by the federal housing administrator to obtain insurance and to make such loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

History: En. Sec. 1, Ch. 8, L. 1935; re-en. Sec. 6018.1, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1937; R.C.M. 1947, 5-1131.

32-1-435. Federal housing securities eligible collateral. Wherever collateral must or may be furnished by any depository in the state of Montana as security for the deposit of any funds whatsoever or wherever collateral must or may be deposited with any official of the state of Montana pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes.

History: En. Sec. 2, Ch. 25, L. 1937; R.C.M. 1947, 5-1132.

32-1-436. Interest not to exceed lawful rate. (1) No bank or savings and loan association shall demand or receive for loans or discounts a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions.

(2) On loans to be repaid in one or more deferred installments, other than loans for purchase of real estate, a bank or savings and loan association may charge not to exceed the following schedule:

(a) on so much of the principal balance as does not exceed $300, $11 per $100 per year;

(b) if the principal balance exceeds $300 but is less than $1,000, $9 per $100 per year on that portion over $300;

(c) if the principal balance exceeds $1,000, $7 per $100 per year on that portion over $1,000.

(3) Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments.

(4) A minimum charge of $20 may be made with respect to any installment loan made by a bank or savings and loan association.

(5) When an installment loan contract provides for payment other than in equal successive monthly installments, the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts, having due regard for the schedule of payments in the contract.

History: En. Sec. 48, Ch. 89, L. 1927; re-en. Sec. 6014.52, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1969; amd. Sec. 1, Ch. 196, L. 1975; R.C.M. 1947, 5-527.

32-1-437. Acceptance and issuance of drafts and letters of credit. Every bank organized and existing under the laws of Montana shall have power and authority to accept for payment at a future date drafts drawn upon it by its customers and to issue letters of credit, authorizing holders thereof to draw drafts upon it or its correspondents at sight or on time, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm, or corporation shall not at any one time exceed 20% of the capital and surplus of the accepting or issuing bank.

History: En. Sec. 74, Ch. 89, L. 1927; re-en. Sec. 6014.85, R.C.M. 1935; amd. Sec. 11-103, Ch. 264, L. 1963; R.C.M. 1947, 5-1001.

32-1-438 through 32-1-440 reserved.

32-1-441. Certified checks. (1) Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same.

(2) It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank, unless at the time such check is certified the person, firm, or corporation drawing the check has on deposit with the bank an amount of money subject to the payment of such check equal to the amount specified in such check.

(3) Any officer or employee of any bank who shall willfully violate the provisions of this section or shall resort to any device or receive any fictitious obligation,

directly or indirectly, in order to evade the provisions hereof shall be guilty of felony.

History: En. Sec. 47, Ch. 89, L. 1927; re-en. Sec. 6014.51, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1947; R.C.M. 1947, 5-526.

32-1-442. Joint deposits — survivorship. (1) When a deposit has been made or shall hereafter be made in any bank transacting business in this state in the names of two or more persons, payable to either or payable to either or the survivor, or any survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to any of said persons, whether the other or others be living or not. The receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any payment so made.

(2) The term "deposit" shall include certificates of deposit heretofore or hereafter issued.

History: En. Sec. 49, Ch. 89, L. 1927; re-en. Sec. 6014.53, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1967; R.C.M. 1947, 5-528.

32-1-443. Trust deposits — payment. Whenever any deposit shall be made in any bank by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said deposit was made.

History: En. Sec. 50, Ch. 89, L. 1927; re-en. Sec. 6014.54, R.C.M. 1935; R.C.M. 1947, 5-529.

32-1-444. Deposit in name of minor. Whenever any deposit shall be made in any bank by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit was made, and the receipt of such minor is a sufficient release or discharge for such deposit to the bank.

History: En. Sec. 51, Ch. 89, L. 1927; re-en. Sec. 6014.55, R.C.M. 1935; amd. Sec. 9, Ch. 71, L. 1977; R.C.M. 1947, 5-530.

32-1-445. Demand or time deposits. Demand deposits, within the meaning of this chapter, shall comprise all deposits payable within 30 days, and time deposits shall comprise all deposits payable after 30 days and all savings accounts and certificates of deposit which are subject to not less than 30 days' notice before payment.

History: En. Sec. 52, Ch. 89, L. 1927; re-en. Sec. 6014.56, R.C.M. 1935; R.C.M. 1947, 5-531.

32-1-446. Safe deposit department. Any bank may conduct a safe deposit department but shall not invest more than one-tenth of its capital and surplus in such safe deposit department. The liability of any bank for the safekeeping and protection of the contents of safety deposit boxes shall be determined by the contract endorsed on the receipt delivered to the renter of said box at the time of the rental, but in any event the obligation of the bank shall be limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

History: En. Sec. 35, Ch. 89, L. 1927; re-en. Sec. 6014.39, R.C.M. 1935; R.C.M. 1947, 5-514.

32-1-447. Giving security for deposit prohibited — exceptions. It is unlawful for any bank to pledge, mortgage, or hypothecate to any depositor any of its real or personal property as security for any deposit, and any pledge, mortgage, or hypothecation made in violation thereof is unenforceable. This provision does not apply to any deposits of money of the United States, public funds deposited in accordance with the provisions of any depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States.

History: En. Sec. 112, Ch. 89, L. 1927; re-en. Sec. 6014.123, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1941; amd. Sec. 22, Ch. 71, L. 1977; R.C.M. 1947, 5-1039.

32-1-448. Payments to foreign administrator. Any bank doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to such deceased depositor to an administrator or executor of such depositor duly appointed and qualified in another state, provided no demand therefor shall have been previously made by an administrator or executor appointed in any county of this state, and such payment shall discharge the bank making the same from its liability on account of such deposit.

History: En. Sec. 104, Ch. 89, L. 1927; re-en. Sec. 6014.115, R.C.M. 1935; R.C.M. 1947, 5-1031.

32-1-449 through 32-1-450 reserved.

32-1-451. Statement of capital, resources, and liabilities. No bank or officer thereof shall advertise in any manner or publish any statement of the capital authorized or subscribed unless it or he advertises and publishes in connection therewith the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

History: En. Sec. 32, Ch. 89, L. 1927; re-en. Sec. 6014.36, R.C.M. 1935; R.C.M. 1947, 5-511.

32-1-452. Dividends, surplus, losses, and bad debts. (1) The directors of any bank may, at certain times and in such manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any such dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus, until such surplus shall amount to 50% of its paid-up capital stock. The whole or any part of such surplus may at any time be converted into paid-in capital, and in such event the surplus shall be restored in the manner above provided until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created, and nothing herein contained shall be construed as prohibitory thereof.

(2) No dividend shall be declared or paid while there shall remain among the ledger assets of the bank any item which shall properly be classified as a bad debt. Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of 12 months after maturity, unless the same be well secured or in legal process of collection, and all judgments held by the bank after 2 years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined shall be charged off the books of such bank before any dividend is declared.

(3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from the surplus, in which event such surplus shall be restored in the manner above provided in the amount required by this chapter.

History: En. Sec. 34, Ch. 89, L. 1927; re-en. Sec. 6014.38, R.C.M. 1935; R.C.M. 1947, 5-513.

32-1-453. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any bank shall not be included in calculation of its profits, unless any bank shall keep its books on a complete accrual basis in which event any such bank shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the same shall be past due as defined by 32-1-452, and shall also carry on its books accrued interest, taxes, and expenses payable.

History: En. Sec. 46, Ch. 89, L. 1927; amd. Sec. 1, Ch. 64, L. 1931; re-en. Sec. 6014.50, R.C.M. 1935; R.C.M. 1947, 5-525.

32-1-454. Past-due and doubtful paper. Every bank carrying any bad debt or a debt of doubtful value as an asset shall upon the request or demand of the department collect the same or put it in good bankable condition or charge it out of its books.

History: En. Sec. 102, Ch. 89, L. 1927; re-en. Sec. 6014.113, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1029.

32-1-455. Reserve requirements. (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks.

(2) The department may establish, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system.

(3) A bank approved by the department as a reserve bank must at all times maintain a reserve of the percentage or percentages as the department shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks.

(4) A solvent bank of good repute having a full paid-up capital and surplus of $300,000, doing business in this state or any other state, may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) It shall be the duty of any bank whose reserve shall drop below the legal requirements to report the matter to the department immediately and as often thereafter as the department shall ask for said report.

(6) When the reserve of a bank falls below the amount required by this section, the bank may not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried.

(8) However, a compliance by member banks with the federal reserve banking laws, rules, and regulations shall be held to be a compliance with the reserve requirements and conditions of this chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter.

History: (1) thru (4), (6) thru (8)En. Sec. 53, Ch. 89, L. 1927; re-en. Sec. 6014.57, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1967; amd. Sec. 18, Ch. 431, L. 1975; Sec. 5-532, R.C.M. 1947; (5)En. Sec. 103, Ch. 89, L. 1927; re-en. Sec. 6014.114, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1030, R.C.M. 1947; R.C.M. 1947, 5-532, 5-1030.

32-1-456 through 32-1-460 reserved.

32-1-461. Bonding of employees. (1) The board of directors of every bank shall require that all officers and employees of banks whose duty includes the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers be bonded.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Such action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds shall be in such form as is provided or approved by the department.

(3) The bonds shall be approved by the president of the bank and his action reported to the board of directors.

(4) All bonds required by this section shall be kept in the custody of the bank subject to inspection by examiners from the department; provided, as far as possible, they may not be placed in the custody of the officer or employee for whom the same is given.

History: En. Sec. 105, Ch. 89, L. 1927; amd. Sec. 3, Ch. 145, L. 1931; re-en. Sec. 6014.116, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 21, Ch. 71, L. 1977; R.C.M. 1947, 5-1032.

32-1-462. Persons previously convicted under banking laws — bank employment. It shall be unlawful for anyone having been convicted of the violations of the banking laws of any state or nation to accept employment in a bank in this state without first stating said facts to the directors of said bank. No such person shall be employed in any bank without the approval of the department, granted in writing after a full consideration of the facts.

History: En. Sec. 120, Ch. 89, L. 1927; re-en. Sec. 6014.130, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1046.

32-1-463. Sale of securities by officer to bank. (1) No director, officer, employee, or controlling stockholder of any bank shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the bank of which he is a director, officer, employee, or controlling stockholder any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board.

(2) Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony.

History: En. Sec. 37, Ch. 89, L. 1927; re-en. Sec. 6014.41, R.C.M. 1935; R.C.M. 1947, 5-516.

32-1-464. Fraud by director, officer, or employee. A director, officer, agent, or employee of a bank is guilty of a felony who:

(1) knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or to cause or direct to be made a full and true entry of it in its books and account; or

(b) concurs in omitting to make any material entry thereof;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that corporation as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 40, Ch. 89, L. 1927; re-en. Sec. 6014.44, R.C.M. 1935; amd. Sec. 16, Ch. 431, L. 1975; amd. Sec. 8, Ch. 71, L. 1977; R.C.M. 1947, 5-519.

32-1-465. Overdraft by officer or employee — receiving personal profit from loan. Any officer, director, agent, teller, clerk, or employee of any bank is guilty of a misdemeanor when such person either:

(1) knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank; or

(2) asks or receives, or consents or agrees to receive, any commission, any premium on insurance, emolument, gratuity, or reward, or any money, property, or thing of value for his own personal benefit or of personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank.

History: En. Sec. 41, Ch. 89, L. 1927; re-en. Sec. 6014.45, R.C.M. 1935; R.C.M. 1947, 5-520.

32-1-466. Purchase of obligation of bank by officer. No director, officer, agent, or other employee of any bank shall, directly or indirectly, for his own personal benefit, purchase or sell or be interested in the purchase or sale of any obligation of said bank or of any of the assets of said bank for a sum less than shall appear upon the face of the obligation or obligations so purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of such obligations or assets so purchased or sold.

History: En. Sec. 43, Ch. 89, L. 1927; re-en. Sec. 6014.47, R.C.M. 1935; R.C.M. 1947, 5-522.

32-1-467. Loans to managing officer or director. No bank shall make a loan to any managing officer of such bank without taking good collateral or other ample and specific security therefor. When such loan or a loan made to a director of such bank, banking institution, or trust company exceeds in amount 10% of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a permanent record of such bank.

History: En. Sec. 45, Ch. 89, L. 1927; re-en. Sec. 6014.49, R.C.M. 1935; R.C.M. 1947, 5-524.

32-1-468. Removal of directors, officers, or employees. Any director, officer, or employee of any bank found by the department, after examination, to be negligent, dishonest, reckless, or incompetent shall be removed from office by the board of directors of such bank on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such bank thereafter by reason of the negligence, dishonesty, recklessness, or incompetency of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them, by a depositor or creditor for recovery of such losses.

History: En. Sec. 109, Ch. 89, L. 1927; re-en. Sec. 6014.120, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1036.

32-1-469 through 32-1-470 reserved.

32-1-471. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction thereof shall be punished as for other felonies.

History: En. Sec. 113, Ch. 89, L. 1927; re-en. Sec. 6014.124, R.C.M. 1935; amd. Sec. 42, Ch. 359, L. 1977; R.C.M. 1947, 5-1040.

32-1-472. Concealing actions from directors. Any officer or employee of any bank who intentionally conceals from the directors of such corporation, or committee thereof where the directors have delegated authority to a committee to pass on loans and discounts, any discount or loan made by and in behalf of the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement whereby the corporation is obligated, during the same period, is guilty of a misdemeanor and on conviction must be imprisoned in the county jail for not more than 12 months for each offense and may also be fined not more than $500, at the discretion of the court.

History: En. Sec. 114, Ch. 89, L. 1927; re-en. Sec. 6014.125, R.C.M. 1935; R.C.M. 1947, 5-1041.

32-1-473. Theft of bank funds by officers or employees. Any banker, officer, director, or employee of any bank who fraudulently appropriates or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent in any case to injure or defraud the bank or any person or corporation or to deceive any officer of the bank or any other person or anyone appointed to examine the affairs of the bank or any person who with like intent, aids or abets any officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction thereof shall be imprisoned in the state prison for a period of not exceeding 20 years.

History: En. Sec. 117, Ch. 89, L. 1927; re-en. Sec. 6014.128, R.C.M. 1935; amd. Sec. 43, Ch. 359, L. 1977; R.C.M. 1947, 5-1044.

32-1-474. False statement to obtain loan. Whoever shall make any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association a loan of money from any bank or for the purpose of gaining an extension of time of payment of any debt due such bank shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 1 year, or both.

History: En. Sec. 118, Ch. 89, L. 1927; re-en. Sec. 6014.129, R.C.M. 1935; R.C.M. 1947, 5-1045.

32-1-475 through 32-1-480 reserved.

32-1-481. Bank holidays. (1) Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

(a) Each Sunday;
(b) New Year's Day, January 1;
(c) Memorial Day, the last Monday in May;
(d) Independence Day, July 4;
(e) Labor Day, the first Monday in September;
(f) Thanksgiving Day, the fourth Thursday in November;
(g) Christmas Day, December 25;
(h) On such days as banks are closed in accordance with 32-1-561 to 32-1-565.

(2) Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, November 11, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part).

32-1-482. Transaction on holidays. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state because done or performed during any time other than regular banking hours or on a legal holiday, provided that nothing shall be construed herein to compel any bank in this state, which by law or custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, to keep open for transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday except at its option.

History: En. Sec. 115, Ch. 89, L. 1927; re-en. Sec. 4016.126, R.C.M. 1935; R.C.M. 1947, 5-1042.

32-1-483. Closing on Saturdays authorized — Saturday treated as holiday. Any bank as defined in 32-1-102 and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays. Any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a Saturday at or by or with respect to any bank including any national bank or national banking association and any federal reserve bank may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday or from the nonopening of any bank for the transaction of business on any Saturday under the authority of 32-1-483 through 32-1-485.

History: En. Sec. 1, Ch. 124, L. 1955; amd. Sec. 23, Ch. 71, L. 1977; R.C.M. 1947, 5-1055.

32-1-484. Bylaws regarding banking hours and business days. (1) At any regular or special meeting of its board of directors, any bank, as herein defined, and any national bank or national banking association and any federal reserve bank may, at any time, enact or amend bylaws to provide for its banking hours or business days or to change its banking hours or business days, including remaining closed or closing on any Saturdays.

(2) Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give reasonable notice to the public of the enactment of a new bylaw or amendment of bylaws by:

(a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or

(b) mailing a copy of such notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and

(c) in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office.

(3) In any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw.

History: En. Sec. 2, Ch. 124, L. 1955; R.C.M. 1947, 5-1056.

32-1-485. Interest payable at bank on Saturday — how paid. Where, by the terms of any note or obligation, interest is payable to a bank on any Saturday upon which a bank is closed pursuant to the authority of 32-1-483 through 32-1-485, interest payable to such bank on any such Saturday may be paid in the amount due on such Saturday on the next succeeding business day with the same effect as if paid to such bank on such Saturday.

History: En. Sec. 3, Ch. 124, L. 1955; R.C.M. 1947, 5-1057.

32-1-486 through 32-1-490 reserved.

32-1-491. Destruction of bank records. Banks shall not be required to preserve or keep their records for a longer period than 11 years next after January 1 of the year following the time of the making of such records, provided, however, that ledger sheets showing unpaid balances in favor of depositors of any banks shall not be destroyed. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section.

History: En. Sec. 1, Ch. 77, L. 1951; R.C.M. 1947, 5-1050.

32-1-492. Reproduction of bank records — admissibility in evidence. (1) Banks are hereby authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, and to preserve, store, use, and employ the same in carrying on business.

(2) In any action or proceedings in which any bank records may be called in question or be demanded of any bank or any officer or employee thereof, a showing that such records have been destroyed in the regular course of business shall be a sufficient excuse for the failure to produce them.

(3) Upon such showing, secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions thereof (and photographic enlargements and prints of microfilm reproductions), when made in the regular course of business, shall be admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter) made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda which were in existence on July 1, 1951, shall be admissible in evidence in proof of the form, text, and content of any said originals which may be destroyed in the regular course of business after July 1, 1951.

History: En. Sec. 2, Ch. 77, L. 1951; R.C.M. 1947, 5-1051.

32-1-493. Admissibility of copies in evidence — exception when original available. Any photostatic or photographic or microfilm reproductions (including enlargements of the latter) of any original records or files of any bank, whether in the form of an entry or entries in a book or any other form of record, shall be admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence, or event when shown to be made in the regular course of business of the bank. But nothing contained in 32-1-491 through 32-1-495 shall be construed to authorize the use of secondary evidence in administrative or court proceedings when original records are in existence and available for use in accord with the rules of evidence.

History: En. Sec. 3, Ch. 77, L. 1951; R.C.M. 1947, 5-1052.

32-1-494. Destruction or reproduction "in regular course of business" defined. Destruction in the regular course of business shall include destruction at any time after making such reproductions. Reproductions made in the regular course of business shall include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

History En. Sec. 4, Ch. 77, L. 1951; R.C.M. 1947, 5-1053.

32-1-495. Application. The provisions of 32-1-491 through 32-1-495 shall be applicable to all records in existence on February 23, 1951, and to all records originating after said date and shall apply to all banks organized under the laws of the state of Montana and also to all national banks located in the state of Montana, as far as applicable to such national banks.

History: En. Sec. 5, Ch. 77, L. 1951; R.C.M. 1947, 5-1054.

Part 5

Dissolution, Closing, and Liquidation

32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, and investment companies may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank or trust company may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank or trust company desiring to voluntarily liquidate shall apply to the department for permission to so liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.

History: En. Sec. 20, Ch. 89, L. 1927; amd. Sec. 2, Ch. 145, L. 1931; amd. Sec. 1, Ch. 10, L. 1935; re-en. Sec. 6014.24, R.C.M. 1935; amd. Sec. 10, Ch. 431, L. 1975; R.C.M. 1947, 5-301.

32-1-502. Grounds for closing bank. (1) When it appears to the department that:

(a) a bank has willfully violated its charter or a law of this state;

(b) a bank has willfully violated a general rule of the department, made in accordance with law;

(c) the capital of a bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or, without that notice, in the event a majority of the board of directors of the bank notifies the department in writing that the impairment cannot be made good;

(d) a bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) a bank's reserve has fallen below the amount required by law and it has failed to make good that reserve within 30 days after being requested to do so by the department or, without that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made good within 30 days or if it is continually allowing its reserve to fall below the required amount;

(f) a bank is conducting business in an unsafe and unauthorized manner or is in an unsafe or unsound condition;

(g) a bank refused to submit its papers, books, and concerns to the inspection of the department; or

(h) an officer of a bank has refused to be examined under oath regarding the affairs, business, or concerns of any bank insofar as they relate to solvency or matters having to do with the supervision by the department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets, and business of every description of the bank and hold them and retain possession of them until the bank is authorized by the department to resume business or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily or in the manner provided by law.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the department and its employees and agents may not be held liable civilly or criminally or upon their official bonds for action taken under this section or for any failure to act under it.

History: En. Sec. 121, Ch. 89, L. 1927; re-en. Sec. 6014.131, R.C.M. 1935; amd. Sec. 43, Ch. 431, L. 1975; R.C.M. 1947, 5-1101.

32-1-503. Bank insolvent when. A bank is insolvent within the meaning of this chapter when all of its capital, surplus, and undivided profits are absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

History: En. Sec. 88, Ch. 89, L. 1927; re-en. Sec. 6014.99, R.C.M. 1935; R.C.M. 1947, 5-1015.

32-1-504. Deposits in insolvent bank. (1) Except as otherwise provided by the Uniform Commercial Code, whenever any bank shall be insolvent in the manner described and set forth in this chapter, such bank shall not accept or receive on deposit any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart from the general assets of the bank from and after the date of the accrual of such insolvency. When such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the department.

(2) In the event such insolvency be not made good, then any and all such trust deposits shall be returned to the depositors making them.

(3) Any officer, director, cashier, manager, member, partner, or managing partner thereof who shall knowingly accept or receive, be accessory to, or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or imprisonment in the state prison not exceeding 5 years or by both fine and imprisonment.

History: En. Sec. 70, Ch. 89, L. 1927; re-en. Sec. 6014.74, R.C.M. 1935; amd. Sec. 11-102, Ch. 264, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-803.

32-1-505. Penalty for receiving deposits when insolvent or for making false statements. (1) Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in 32-1-504; subscribes or makes any false statements or entries in the books of such bank; knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank; or willfully subscribes or makes false reports is subject to imprisonment in the state prison for a term not exceeding 5 years.

(2) Any person or the members of any partnership or banking association who willfully or knowingly receive deposits, money, or commercial papers circulating as money, when such person, partnership, or banking association is insolvent, or who subscribe or make any false statement or entries in the books of any such bank or who knowingly subscribe or exhibit any false papers with the intention of deceiving any person authorized to examine the condition of any bank provided for in this chapter or who willfully subscribe or make false reports to the department shall be guilty of a felony and shall be punishable by imprisonment in the state prison for a term not exceeding 5 years.

History: (1)En. Sec. 69, Ch. 89, L. 1927; re-en. Sec. 6014.73, R.C.M. 1935; amd. Sec. 16, Ch. 71, L. 1977; Sec. 5-802, R.C.M. 1947; (2)En. Sec. 87, Ch. 89, L. 1927; re-en. Sec. 6014.98, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1014, R.C.M. 1947; R.C.M. 1947, 5-802, 5-1014.

32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may, in its discretion, notify the board of directors of the bank by written notice that the impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and it may, in its discretion, order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the department as provided in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, it or a part of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale shall be given by certified or registered mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and makes them void in the hands of the stockholder, his assigns or pledgees. A new certificate shall be issued by the bank to the purchaser for the number of shares purchased and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold shall be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the record holder whose stock has been sold for the assessment.

History: En. Sec. 68, Ch. 89, L. 1927; re-en. Sec. 6014.72, R.C.M. 1935; amd. Sec. 29, Ch. 431, L. 1975; R.C.M. 1947, 5-801.

32-1-507. Power of closed banks to borrow money from governmental agencies. After applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full.

History: En. Sec. 1, Ch. 3, Ex. L. 1933; re-en. Sec. 6015.1, R.C.M. 1935; amd. Sec. 62, Ch. 431, L. 1975; amd. Sec. 26, Ch. 71, L. 1977; R.C.M. 1947, 5-1126.

32-1-508. Corporate existence — ceases when. The charters and the corporate existence of banks shall cease automatically and become nonexistent upon the completion of liquidation of the affairs of said bank, whether accomplished voluntarily or through legal process. For the purposes of this section, a bank's affairs shall be considered liquidated and completed when all of its property of every kind has been sold or applied toward the payment of its obligations and the corporation is left without property in existence or in reasonable expectancy.

History: En. Sec. 106, Ch. 89, L. 1927; re-en. Sec. 6014.117, R.C.M. 1935; R.C.M. 1947, 5-1033.

32-1-509. Taxes on banks which have ceased to do business. Whenever any bank ceases to do business as a bank, no taxes shall be levied or collected in accordance with the laws governing the assessment of banks but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.

History: En. Sec. 95, Ch. 89, L. 1927; re-en. Sec. 6014.106, R.C.M. 1935; R.C.M. 1947, 5-1022.

32-1-510. Penalty for maliciously declaring bank insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a bank insolvent, he is subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both, and shall forfeit his office.

History: En. Sec. 122, Ch. 89, L. 1927; re-en. Sec. 6014.132, R.C.M. 1935; amd. Sec. 44, Ch. 431, L. 1975; R.C.M. 1947, 5-1102.

32-1-511. Bank may be placed in department's possession. A bank may place its affairs and assets under the control and in the possession of the department by posting a notice on the front door of the bank indicating that it is in the possession of the department. The notice shall be signed by a majority of the directors in office of the bank. Immediately upon the posting of the notice by a bank, it shall notify the department of its action.

History: En. Sec. 123, Ch. 89, L. 1927; re-en. Sec. 6014.133, R.C.M. 1935; amd. Sec. 45, Ch. 431, L. 1975; R.C.M. 1947, 5-1103.

32-1-512. Effect of posting notice. The posting of the notice by the directors of a bank or of a like notice by the department is sufficient to place all assets and property of the bank, of whatever nature and wherever located, in possession of the department and operates as a bar to an attachment or other legal proceedings against the bank or its assets. No valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of the bank after the posting of the notice or after taking possession of a bank by the department without its consent.

History: En. Sec. 124, Ch. 89, L. 1927; re-en. Sec. 6014.134, R.C.M. 1935; amd. Sec. 46, Ch. 431, L. 1975; R.C.M. 1947, 5-1104.

32-1-513. Taking possession of bank — notice. On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify at once, personally or by wire, all corresponding banks and all persons or corporations known to it to be in possession of any of the estate of the bank.

History: En. Sec. 125, Ch. 89, L. 1927; re-en. Sec. 6014.135, R.C.M. 1935; amd. Sec. 47, Ch. 431, L. 1975; R.C.M. 1947, 5-1105.

32-1-514. Resumption after closing. After the department has taken possession of a bank, it may permit that bank to resume business upon conditions which may be approved by the department.

History: En. Sec. 126, Ch. 89, L. 1927; re-en. Sec. 6014.136, R.C.M. 1935; amd. Sec. 48, Ch. 431, L. 1975; amd. Sec. 24, Ch. 71, L. 1977; R.C.M. 1947, 5-1106.

32-1-515. Powers of department on closing bank — court proceedings. (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all moneys due to that bank and to do those other acts necessary to conserve its assets and business and the department shall proceed to liquidate the affairs of the bank.

(2) The department may, in its discretion and except as otherwise limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the bank and the speedy and economical liquidation of the assets and affairs of the bank and the payment of its creditors or for the reopening and resumption of business where that is practicable or desirable.

(3) It may institute, in its own name or in the name of the bank, those suits and other legal proceedings as it considers expedient for those purposes.

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court in chambers, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets, which sale may be made to stockholders, officers, directors, or others interested in the bank, on consent of the court.

(b) In the court proceedings the bank shall be made a party by notice issued on order of the court or judge, in place of summons, and served upon some officer of the bank, if there is any in the county. If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10 days before the day of hearing.

(c) The hearing of an application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days.

History: En. Sec. 127, Ch. 89, L. 1927; re-en. Sec. 6014.137, R.C.M. 1935; amd. Sec. 49, Ch. 431, L. 1975; R.C.M. 1947, 5-1107.

32-1-516. Recourse of aggrieved bank — injunction. (1) A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within 10 days after possession has been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department.

(2) The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department.

(4) Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them.

History: En. Sec. 128, Ch. 89, L. 1927; re-en. Sec. 6014.138, R.C.M. 1935; amd. Sec. 50, Ch. 431, L. 1975; R.C.M. 1947, 5-1108.

32-1-517. Department may retain bank employees — liquidating agent's salary and expenses. (1) The department may retain those officers or employees of the bank which it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the bank that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred by a liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the banks. The funds for those expenses shall be raised by assessing each bank in ratio herein set forth and paying those expenses direct to the persons entitled to them, without depositing any of the funds in the state treasury.

History: En. Sec. 129, Ch. 89, L. 1927; re-en. Sec. 6014.139, R.C.M. 1935; amd. Sec. 51, Ch. 431, L. 1975; R.C.M. 1947, 5-1109.

32-1-518. Compensation of agents and attorneys. The compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department shall be fixed by the department, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank. The department shall, upon written request of the district judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation has been fixed and approved and the services rendered, the compensation shall be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

History: En. Sec. 130, Ch. 89, L. 1927; re-en. Sec. 6014.140, R.C.M. 1935; amd. Sec. 52, Ch. 431, L. 1975; R.C.M. 1947, 5-1110.

32-1-519 through 32-1-530 reserved.

32-1-531. Notice to creditors of insolvent bank. The department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice shall call on all persons who have claims against the bank to present them to the department or its authorized agent at a place to be specified in the notice and to make sworn proof, in form to be fixed by the department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

History: En. Sec. 131, Ch. 89, L. 1927; re-en. Sec. 6014.141, R.C.M. 1935; amd. Sec. 53, Ch. 431, L. 1975; R.C.M. 1947, 5-1111.

32-1-532. Claims — allowance and rejection. (1) The department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by certified or registered mail and an affidavit of the service of the notice, which shall be prima facie evidence of service, shall be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county where the bank is located within 90 days after the service to fix the amount of the claim and its order of priority or either. An appeal from the department's allowance, either as to priority or amount, may also be taken to the district court of that county by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

History: En. Sec. 132, Ch. 89, L. 1927; re-en. Sec. 6014.142, R.C.M. 1935; amd. Sec. 54, Ch. 431, L. 1975; R.C.M. 1947, 5-1112.

32-1-533. Payment of claims. (1) Claims presented to the department prior to the expiration of the time fixed in the notice to creditors and allowed by it shall be paid in the order of priority fixed in this chapter.

(2) Those filed after that expiration and within 1 year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the department and available for the payment of claims of their order of priority at the time the claims are filed. As against other claims of the same order of priority on which dividends have been paid, they are entitled to payment in a proportionate amount before further payments are made on those other claims.

(3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be

allowed or paid unless all other creditors' claims of any kind, except claims of shareholders based on stock or assessments paid on stock, have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

History: En. Sec. 133, Ch. 89, L. 1927; re-en. Sec. 6014.143, R.C.M. 1935; amd. Sec. 55, Ch. 431, L. 1975; R.C.M. 1947, 5-1113.

32-1-534. Claims — order of payment — priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department shall be as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, shall be considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) of this section without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) of this section or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and likewise property on which the bank has liens by mortgage or otherwise. It may also, in its discretion, create a fund or retain in its hands, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), moneys for those purposes.

(3) Collateral which has been put up or pledged as security for the payment of bills payable by a bank, or loans or discounts which have been outstanding as rediscounts of a bank prior to the closing of it, is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section shall be allowed.

(4) Deposits of a person, firm, or corporation in a bank which is in the possession of the department may be offset against any indebtedness (subject to the conditions of subsection (3) of this section), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor.

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; re-en. Sec. 6014.144, R.C.M. 1935; amd. Sec. 11-104, Ch. 264, L. 1963; amd. Sec. 56, Ch. 431, L. 1975; R.C.M. 1947, 5-1114.

32-1-535. Claims — partial payments — assignments. (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. It may, in its discretion and if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims, if it has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled to distribution, in the order of priority fixed in this chapter, making that payment to the creditors as they appear on the books and records of the bank and determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time thereafter when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more may be paid that creditor until the payment made other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon the disputed claims or deposits shall be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment shall be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested.

History: En. Sec. 135, Ch. 89, L. 1927; re-en. Sec. 6014.145, R.C.M. 1935; amd. Sec. 5, Ch. 145, L. 1931; amd. Sec. 57, Ch. 431, L. 1975; amd. Sec. 25, Ch. 71, L. 1977; R.C.M. 1947, 5-1115.

32-1-536. Deposit of funds in department's hands. All funds in the hands of the department belonging to a bank in process of liquidation shall be deposited in the department's name in those banks within the state which may be selected and designated by it and subject to its checks. Those funds are to be preferred and protected as provided in this chapter.

History: En. Sec. 136, Ch. 89, L. 1927; re-en. Sec. 6014.146, R.C.M. 1935; amd. Sec. 58, Ch. 431, L. 1975; R.C.M. 1947, 5-1116.

32-1-537. Disposition of unclaimed funds. (1) The department shall certify to the state treasurer a complete list of funds remaining with it uncalled for, which have been left with it in its official capacity, in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificate, it shall transmit to the state treasurer the funds with accumulated interest on them, which it has so held in trust for 6 months. A copy of the certificate shall also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund of this state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer may apply to the department for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the auditor who shall audit the claim and, if found correct, so certify to the department, which, if it approves the claim, shall transmit the claim to the legislature with a statement of its approval.

History: En. Sec. 137, Ch. 89, L. 1927; re-en. Sec. 4016.147, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1961; amd. Sec. 59, Ch. 431, L. 1975; amd. Sec. 2, Ch. 343, L. 1977; R.C.M. 1947, 5-1117.

32-1-538. Disposition of assets remaining after payment of claims. (1) When the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court in open court or in chambers for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to that other person, if any, designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon notice which the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders shall by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) of this section.

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the bank with the clerk of court of the county in which the bank is located. Upon notice which the court may order, the report shall be set for hearing before the court and, if found correct and all funds accounted for, the court shall approve it. The department may at the same time and in the report make application to the district court of the county in which the bank is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The charter of the bank shall be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern and considered by the department to be of no value may be destroyed. However, no correspondence or records may be destroyed until 10 years after the date the bank ceased to be a going concern.

(3) On application for orders as provided in this section, the bank shall be made a party by notice issued on order of the court or judge and served in a manner the court directs, and applications authorized by this section may be heard at any time in court or in chambers, as the court may order, upon not less than 5 days' posted or served notice of the hearing.

History: En. Sec. 138, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1935; re-en. Sec. 6014.148, R.C.M. 1935; amd. Sec. 60, Ch. 431, L. 1975; R.C.M. 1947, 5-1118.

32-1-539 through 32-1-550 reserved.

32-1-551. Liquidating officer's powers and duties. (1) At any time after taking possession of a bank for the purpose of liquidation, the liquidating officer duly qualified under the laws, as soon as he ascertains that the assets of such bank will be insufficient to pay its debts and liabilities, may proceed to collect and enforce the stockholders' liability. For that purpose he may institute and maintain in his own name as such liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. He may receive and receipt for moneys received on account of stockholders' liability, and any money so paid to the liquidating officer by a stockholder in whole or partial satisfaction of his liability shall not be deemed paid voluntarily but shall give the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by creditor or liquidating officer. The liquidating officer is authorized, by and with the consent of the court having jurisdiction of such liquidation, to compromise, settle, and compound claims for stockholders' liability, and such settlements and compromises when approved by the court shall be legal and binding upon all parties concerned, including creditors.

(2) All sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, shall be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution, except that the liquidating officer may deduct from amounts collected the court costs or attorney's fees (such attorney's fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for attorney's fees shall not apply to collections which are made outside of the state of Montana) and other expenses incurred by him in the prosecution of any action for the collection thereof.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-402.

32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the question of the time when and the court where necessary legal proceedings shall be conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of 32-1-333 and 32-1-551 through 32-1-553 do not impose any liability on a stockholder of a bank which is a member of the federal deposit insurance corporation.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(1) thru (3).

32-1-553. Department to file inventory — report required. The department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. It shall also every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report shall contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account shall be set for hearing upon the notice the court may require and, if found to be correct, shall be approved by the court.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(4).

32-1-554 through 32-1-560 reserved.

32-1-561. Definitions. As used in 32-1-562 through 32-1-565, unless the context requires otherwise, the following definitions apply:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions of 32-1-562 through 32-1-565 are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Officer" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of 32-1-562 through 32-1-565 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved.

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a bank or which poses an imminent or existing threat to the safety or security of persons or property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following:

(a) fire;
(b) flood;
(c) earthquake;
(d) hurricanes;
(e) wind, rain, or snowstorms;
(f) labor disputes and strikes;
(g) power failures;
(h) transportation failures;
(i) interruption of communication facilities;
(j) shortages of fuel, housing, food, transportation, or labor;
(k) robbery or attempted robbery;
(l) actual or threatened enemy attack;
(m) epidemics or other catastrophes;
(n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

History: En. Sec. 1, Ch. 32, L. 1971; amd. Sec. 38, Ch. 431, L. 1975; R.C.M. 1947, 5-1058.

32-1-562. Power of department. When the department is of the opinion that an emergency exists or is impending in this state or in any part of this state, it may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists or is impending which affects or may affect a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, it may authorize the particular bank or banks or office or offices so affected to close. The office or offices so closed shall remain closed until the department proclaims that the emergency has ended or until such earlier time as the officers of the bank determine that one or more offices theretofore closed because of the emergency should reopen and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: En. Sec. 2, Ch. 32, L. 1971; amd. Sec. 39, Ch. 431, L. 1975; R.C.M. 1947, 5-1059.

32-1-563. Powers of officers. (1) When the officers of a bank are of the opinion that an emergency exists or is impending which affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office so closed shall remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a bank may close any of the bank's offices on any day designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance.

History: En. Sec. 3, Ch. 32, L. 1971; amd. Sec. 40, Ch. 431, L. 1975; R.C.M. 1947, 5-1060.

32-1-564. Notice of bank closing. A bank closing an office under authority granted under 32-1-563(1) shall give to the department as prompt notice of its action as conditions will permit and by any means available, and, in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971; amd. Sec. 41, Ch. 431, L. 1975; R.C.M. 1947, 5-1061.

32-1-565. Effect of closing. (1) A day on which a bank or any of its offices is closed during any part of its normal banking hours under 32-1-562 and 32-1-563 with respect to that bank or, if not all of its offices are closed, then with respect to the office or offices which are closed shall be a legal holiday for all purposes with respect to any banking business. No liability or loss of rights of any kind on the part of a bank, or director, officer, or employee thereof, may accrue or result by virtue of a closing authorized by 32-1-562 and 32-1-563.

(2) The provisions of 32-1-561 through 32-1-565 are in addition to any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971; amd. Sec. 42, Ch. 431, L. 1975; R.C.M. 1947, 5-1062.

Part 6

Federal Deposit Insurance Corporation

32-1-601. Definition of banking institution. The term "banking institution" as used in this part shall be construed to mean any bank, trust company, bank and trust company, stock savings bank, or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

History: En. Sec. 1, Ch. 197, L. 1937; R.C.M. 1947, 5-1201.

32-1-602. Banking institutions empowered to receive federal deposit insurance corporation aid. A banking institution may, on the authority of its board of directors or a majority thereof, enter into those contracts, incur those obligations, and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators by virtue of those provisions of the Federal Deposit Insurance Act which establish the federal deposit insurance corporation and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or safeguard banking institutions and their depositors. A banking institution may also subscribe for and acquire stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements from time to time adopted by that corporation.

History: En. Sec. 2, Ch. 197, L. 1937; amd. Sec. 64, Ch. 431, L. 1975; R.C.M. 1947, 5-1202.

32-1-603. Appointment of the corporation as agent in liquidation. If a banking institution, the deposits in which are in any extent insured by the federal deposit insurance corporation created by the Federal Deposit Insurance Act, 12 U.S.C. sections 1811-1831, is closed on account of inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond, to assist it or act for it in the liquidation of that banking institution.

History: En. Sec. 3, Ch. 197, L. 1937; amd. Sec. 65, Ch. 431, L. 1975; R.C.M. 1947, 5-1203.

32-1-604. Subrogation of corporation. Whenever any banking institution shall have been closed as aforesaid and said federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have been appointed agent of the department in the liquidation of such closed banking institution, as herein provided, shall be and become subrogated by operation of law to all rights against such closed banking institution of each owner of a claim for deposit to the extent now or hereafter necessary to enable the federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured banks.

History: En. Sec. 4, Ch. 197, L. 1937; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1204.

32-1-605. Examinations by the corporation — accepted when. (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted by the department of a banking institution, the examination made of it within a reasonable period by the federal deposit insurance corporation, if a signed copy of the examination is furnished to the department. The department may also, in its discretion, accept a report relative to the condition of a banking institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the institution by the department, if a copy of the report is furnished to the department. The department may, in its discretion, disclose to the corporation, or an official or examiner thereof, any information possessed by the department with reference to the conditions or affairs of an insured institution.

(2) The department may furnish to the corporation, or to an official or examiner thereof, a copy or copies of any examinations made of those banking institutions and of any reports made by them.

(3) Nothing in this section limits the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal Deposit Insurance Act or any substitution for it, to comply with the provisions of that act, its substitutions, or the requirements of that corporation relative to examinations and reports or limits the powers of the department with reference to examinations and reports under existing law.

History: En. Sec. 5, Ch. 197, L. 1937; amd. Sec. 66, Ch. 431, L. 1975; R.C.M. 1947, 5-1205.

32-1-606. Closed banking institutions empowered to borrow from the corporation. If a banking institution is closed on account of inability to meet the demands of its depositors or by action of the department or by action of its directors or, in the event of its insolvency or suspension, the department or its agent, with the permission of the court having jurisdiction, may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from it. The department upon the order of a district court of competent jurisdiction may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law.

History: En. Sec. 6, Ch. 197, L. 1937; amd. Sec. 67, Ch. 431, L. 1975; R.C.M. 1947, 5-1206.

Part 7

Uniform Common Trust Act

32-1-701. Short title. This part may be cited as the "Uniform Common Trust Act".

History: En. Sec. 4, Ch. 64, L. 1955; R.C.M. 1947, 5-1404.

32-1-702. Application. This part shall apply to fiduciary relationships in existence as of July 1, 1955, or thereafter established.

History: En. Sec. 7, Ch. 64, L. 1955; R.C.M. 1947, 5-1406.

32-1-703. Common trust fund allowed. A bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary or itself and others as cofiduciaries. It may, as that fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in the common trust fund, if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to the investment. A bank or trust company, qualified to act as fiduciary in this state, which is not a member of the federal reserve system shall, in operation of the common trust fund, comply with the rules adopted by the department, and the department may adopt rules it considers necessary and proper in the premises.

History: En. Sec. 1, Ch. 64, L. 1955; amd. Sec. 68, Ch. 431, L. 1975; R.C.M. 1947, 5-1401.

32-1-704. Accounting for trust funds. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds, but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

History: En. Sec. 2, Ch. 64, L. 1955; R.C.M. 1947, 5-1402.

32-1-705. Construction. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 64, L. 1955; R.C.M. 1947, 5-1403.

32-1-706. Common trust funds — affiliates. (1) Notwithstanding the provisions of 32-1-703, any bank or trust company qualified to act as fiduciary in this state may:

(a) establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by another bank or trust company which is owned or controlled by a corporation which owns or controls such bank or trust company; and

(b) as a fiduciary or cofiduciary, invest funds which it holds for investment in common trust funds established and maintained pursuant to subsection (a) if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship. This section applies to fiduciary relationships now in existence or hereafter created.

(2) To the extent not inconsistent with the provisions of this section, the provisions of 32-1-701 through 32-1-705 relating to common trust funds shall apply to the establishment and maintenance of common trust funds under this section.

History: En. 5-1407 by Sec. 1, Ch. 271, L. 1977; R.C.M. 1947, 5-1407.

Part 8

Subsidiary Trust Companies

32-1-801. Short title. This part may be cited as "The Subsidiary Trust Company Act of 1975".

History: En. 5-1501 by Sec. 1, Ch. 401, L. 1975; R.C.M. 1947, 5-1501.

32-1-802. Definitions. As used in this part the following definitions apply:

(1) "Subsidiary trust company" means any corporation which is incorporated under the banking laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by an owning bank holding company and which has as its purposes any one or more of the purposes described in 32-1-107, except that a subsidiary trust company may not be empowered to accept deposits or otherwise to conduct commercial banking business.

(2) "Affiliated bank", with respect to a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of the subsidiary trust company.

(3) "Affiliated bank", with respect to another bank which is not a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office located in this state, more than 50% of the stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of such other bank.

(4) "Owning bank holding company", with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.

(5) "Main office", with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of that subsidiary trust company or affiliated bank at which its principal functions are to be conducted.

(6) "Trust office", with respect to a subsidiary trust company, means an office, including the main office, of the subsidiary trust company maintained for the purpose of conducting its business.

(7) "Trust office", with respect to a bank which is not a subsidiary trust company, means an office other than the main office of that bank maintained solely for the purpose of conducting trust business as described in 32-1-804.

(8) "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee (including trustee of a common trust fund), executor, administrator, personal representative, registrar, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, receiver, conservator, escrow agent, agent for the investment of money, attorney-in-fact, and any other similar capacity.

History: En. 5-1502 by Sec. 2, Ch. 401, L. 1975; R.C.M. 1947, 5-1502.

32-1-803. Organization of subsidiary trust companies. A subsidiary trust company shall be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-322, 32-1-324, 32-1-325, and 32-1-351 through 32-1-356 or under the laws of the United States. To the extent not inconsistent with the provisions of this part, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States shall be subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state.

History: En. 5-1503 by Sec. 3, Ch. 401, L. 1975; R.C.M. 1947, 5-1503.

32-1-804. Permissible business of subsidiary trust companies. The permissible business of a subsidiary trust company shall be to engage in such trust business as may be engaged in by a trust company under 32-1-107 and such business as is incidental thereto. A subsidiary trust company shall not accept deposits or otherwise conduct commercial banking business.

History: En. 5-1504 by Sec. 4, Ch. 401, L. 1975; R.C.M. 1947, 5-1504.

32-1-805. Trust offices of subsidiary trust companies. Notwithstanding the provisions of 32-1-372, a subsidiary trust company may have a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities but not elsewhere.

History: En. 5-1505 by Sec. 5, Ch. 401, L. 1975; R.C.M. 1947, 5-1505.

32-1-806. Trust offices of affiliated banks. Notwithstanding the provisions of 32-1-372, a bank having trust powers may be authorized by the department or by the comptroller of the currency, in the case of a national banking association, to maintain a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities.

History: En. 5-1506 by Sec. 6, Ch. 401, L. 1975; R.C.M. 1947, 5-1506.

32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies. (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, such subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of each affiliated bank joining in the application is located and shall designate each fiduciary account existing at the date thereof with respect to which such subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, to wit:

(a) in the case of an existing fiduciary account which may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the same;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, to the clerk of the court in which such estate, guardianship, or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in any of the foregoing subsections, to each income beneficiary of such account and to each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof; and

(e) in the case of any existing fiduciary account wherein an affiliated bank specified in the application is acting with a cofiduciary, to each such cofiduciary at his last known address.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and give notice thereof as hereinafter provided. The clerk of court shall cause a copy of such notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first such publication to be at least 25 days preceding the hearing date, such publication to be in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located or, if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least 25 days preceding the hearing date, the clerk of the court shall cause a copy of such notice

to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this part, at his address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in such application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the subsidiary trust company is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary (except assets held for accounts with respect to which there has been no substitution pursuant to this section), and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.

History: En. 5-1507 by Sec. 7, Ch. 401, L. 1975; R.C.M. 1947, 5-1507.

32-1-808. Transfer of fiduciary relationships between affiliated banks. (1) Any bank which has received approval pursuant to 32-1-806 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections (1)(a) through (1)(e) of 32-1-807.

(2) When any such application has been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by 32-1-807.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall

become the property of such applicant bank without the necessity of any instrument of transfer or conveyance.

History: En. 5-1508 by Sec. 8, Ch. 401, L. 1975; amd. Sec. 27, Ch. 71, L. 1977; R.C.M. 1947, 5-1508.

CHAPTER 2

BUILDING AND LOAN ASSOCIATIONS

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Part 1

General Provisions

32-2-101. Purpose — definitions. (1) A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The owners of shares in a building and loan association are called stockholders. The members of a building and loan association are its shareholders, stockholders, borrowers, or purchasers of real estate under contract.

(3) The associations have continual succession and shall be organized under the provisions of this chapter.

(4) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter;

(b) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

History: Ap. p. Sec. 1, Ch. 57, L. 1927; re-en. Sec. 6355.1, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949; amd. Sec. 69, Ch. 431, L. 1975; Sec. 7-101, R.C.M. 1947; Ap. p. Sec. 13, Ch. 57, L. 1927; re-en. Sec. 6355.14, R.C.M. 1935; Sec. 7-115, R.C.M. 1947; R.C.M. 1947, 7-101, 7-115.

32-2-102. Fees paid into state treasury. All fees provided for in this chapter and paid to the department or secretary of state shall be by them turned in to the state treasury for the credit of the general fund of the state of Montana.

History: En. Sec. 27, Ch. 57, L. 1927; amd. Sec. 1, Ch. 10, L. 1931; re-en. Sec. 6355.28, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-129.

32-2-103. Application of chapter. (1) The provisions of this chapter shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees, or combinations of persons, whether foreign or domestic and whether citizens of this state or otherwise, that transact or attempt to transact a building and loan business or a business of like kind or character or where, by its or their charter, constitution, bylaws, or by a declaration of trust or other device or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series from which loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes within the boundaries of this state.

(2) The name association when used in this chapter shall be deemed to include any of the above-named.

(3) This chapter does not apply to foreign associations with relation to the purchasing of or participating in loans secured by mortgages, trust indentures, or other security interests in real or personal property if there is no activity conducted by the out-of-state lender in Montana with respect to the loan except periodic inspection of the security.

History: En. Sec. 28, Ch. 57, L. 1927; re-en. Sec. 6355.29, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1977; R.C.M. 1947, 7-130.

32-2-104. Conformity required. (1) The powers, rights, duties, privileges, and obligations of every association organized and doing business in a form similar to that authorized by this chapter shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if the association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws, and rules of each heretofore made or existing are hereby modified, altered, and amended to conform with the provisions of this chapter, and the same are declared void where the articles of incorporation, bylaws, or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between the association and its shareholders or any one of them or any other person or persons or any valid contract between the shareholders of the association existing on May 1, 1927, shall not be in any way impaired by the provisions of this chapter.

(2) With these exceptions every building and loan association shall possess the powers, rights, duties, and privileges and be subject to the obligations, restrictions, and liabilities conferred and imposed by this chapter, notwithstanding anything to the contrary in its articles of incorporation, bylaws, or rules.

(3) All obligations to the association heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against the association shall be enforced against it as fully and completely as they might have been enforced before.

(4) Except as above set forth, on and after September 7, 1927, no domestic or foreign association engaged as of March 7, 1927, in the business of a building and loan association or a business of like character shall be permitted to conduct that business in this state unless it complies in every respect with the provisions of this chapter.

History: En. Sec. 34, Ch. 57, L. 1927; re-en. Sec. 6355.35, R.C.M. 1935; amd. Sec. 81, Ch. 431, L. 1975; R.C.M. 1947, 7-136.

32-2-105. Laws of other states — reciprocity. When by the laws of any other state, territory, or nation any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed on building and loan associations of this state doing business in such other state, territory, or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions shall be imposed on the associations of such other state, territory, or nation doing or attempting to do a building and loan business or a business of like kind or character in this state and upon their agents herein.

History: En. Sec. 33, Ch. 57, L. 1927; re-en. Sec. 6355.34, R.C.M. 1935; R.C.M. 1947, 7-135.

32-2-106. Penalties. (1) It shall be unlawful for any association, whether foreign or domestic and whether citizens of this state or otherwise, to do business or attempt to do business, as defined in this chapter, without having first complied with its provisions and having received a certificate of authority to do business from the department. Any such association violating any of the provisions of this chapter and failing to comply with any of its provisions shall be fined not less than $250 or more than $1,000 for each and every such violation, to be recovered by an action in the name of the state and on collection paid into the state treasury.

(2) Any person or persons, whether citizens of this state or otherwise, who aid or assist any such association to do business contrary to the provisions of this chapter without having first complied with all of its provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than $500 or imprisoned not more than 6 months, or both.

History: En. Sec. 35, Ch. 57, L. 1927; re-en. Sec. 6355.36, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-137.

32-2-107. Obtaining property by fraud — false report — refusal to permit inspection of books. A director, officer, agent, or employee of a building and loan association is guilty of a felony who:

(1) willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or direct to be made a full and true entry of it in its books and accounts;

(b) concurs in omitting to make a material entry thereof;

(2) willfully makes or concurs in making or publishing a written report, exhibit, or statement of the association's affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of the association's books, willfully refuses or neglects to make a proper entry in the books as required by law or to exhibit or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 37, Ch. 57, L. 1927; re-en. Sec. 6355.38, R.C.M. 1935; amd. Sec. 83, Ch. 431, L. 1975; amd. Sec. 30, Ch. 71, L. 1977; R.C.M. 1947, 7-139.

32-2-108. Purchase of obligations of association by officer. No director, officer, agent, or other employee of any building and loan association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any obligation of said association for a less sum than shall appear upon the books of such association to be the value thereof. Every person violating the provisions of this section shall for each offense forfeit to the state three times the face value of any such obligation so purchased.

History: En. Sec. 38, Ch. 57, L. 1927; re-en. Sec. 6355.39, R.C.M. 1935; R.C.M. 1947, 7-140.

32-2-109. Purchase of assets of association by officer. No officer, director, agent, or other employee of any association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any of the assets of any building and loan association for a less sum than the book value thereof. Every person violating any provision of this section shall for each offense forfeit to the state twice the nominal value of any such assets so purchased.

History: En. Sec. 39, Ch. 57, L. 1927; re-en. Sec. 6399.40, R.C.M. 1935; R.C.M. 1947, 7-141.

32-2-110. Payments to be made by building and loan associations. For the credit of the general fund of the state, each building and loan association under the supervision of the department shall pay to the state treasurer, on or before July 1 each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

(1) The minimum fee to be paid by any building and loan association shall be the sum of $100.

(2) For the first $5 million of assets, a charge of 15 cents for each $1,000 of assets shall be made.

(3) For the second $5 million of assets, a charge of 10 cents for each $1,000 of assets shall be made.

(4) For assets in excess of $10 million but not exceeding $20 million, a charge of 5 cents for each $1,000 of assets shall be made.

(5) For assets in excess of $20 million but not exceeding $30 million, a charge of 3 cents for each $1,000 of assets shall be made.

(6) For all assets in excess of $30 million, a charge of 2 cents for each $1,000 of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.83, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-909.

Part 2

Organization

32-2-201. Articles of incorporation — contents. Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and a corporation not organized under this chapter may

not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association which shall be within this state;

(3) the amount of its capital stock and the number of shares into which the same shall be divided. The capital stock shall be divided into shares having a par value of $100.

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

History: En. Sec. 2, Ch. 57, L. 1927; re-en. Sec. 6355.2, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1949; amd. Sec. 28, Ch. 71, L. 1977; R.C.M. 1947, 7-102.

32-2-202. Certified copy of articles prima facie evidence. A certified copy of any articles of incorporation filed in pursuance of this chapter must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 3, Ch. 57, L. 1927; re-en. Sec. 6355.3, R.C.M. 1935; R.C.M. 1947, 7-103.

32-2-203. Evidence of corporate existence or capacity. The certificate issued by the secretary of state in pursuance of 32-2-205 or a certificate issued by the department setting forth that any association, domestic or foreign, has fully complied with the provisions of this chapter and is lawfully authorized to transact business in this state shall be admitted in evidence in all courts in this state and shall be prima facie evidence of the corporate character and capacity of such association and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 4, Ch. 57, L. 1927; re-en. Sec. 6355.4, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-104.

32-2-204. Bylaws. (1) Contemporaneously with or immediately following the execution of said articles of incorporation provided for in 32-2-201, the incorporators then acting in the capacity of directors shall adopt appropriate bylaws to govern and prescribe the methods and the officers by whom the business of the association shall be conducted.

(2) The bylaws shall be in conformity with the provisions of this chapter and at all times during the regular hours of business shall be open to the inspection of the members at its principal place of business.

(3) The bylaws, among other things, shall especially provide for:

(a) the character and method of conducting the business of the association, with rules governing the addition of members, the sale of its shares, the amount of membership fee;

(b) the annual meeting of the shareholders;

(c) the annual election and qualification of directors and the term or period during which the directors shall serve, provided that the term or period for all directors shall not be less than 1 or more than 3 years and that the directors shall be so elected that as near as possible the term of an equal number shall expire each year;

(d) the appointment of officers;

(e) the adoption, ratification, and amendment of the bylaws, which adoption, ratification, and amendment may be made either by the stockholders or board of directors;

(f) the method of voting at such annual meeting; and

(g) the periodical investigation of the business and condition of such association.

(4) No bylaws and no change or amendment thereof shall be effective until first approved by the department, and no association shall commence the transaction of business as such until the bylaws are first approved by the department.

History: En. Sec. 5, Ch. 57, L. 1927; re-en. Sec. 6355.5, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-105.

32-2-205. Capital stock requirements — investigation — certificate of incorporation, how issued. (1) The capital stock named in the articles of incorporation refers to the authorized capital stock.

(2) The organization may be completed and business commenced when 5% of the capital stock is subscribed and not less than $2,500 paid in, in cash. That amount must thereafter be maintained.

(3) (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and it appears to the satisfaction of the department that 5% of the authorized capital has actually been paid in cash upon the subscription of shares, the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

(4) (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the association is complete.

History: En. Sec. 6, Ch. 57, L. 1927; re-en. Sec. 6355.6, R.C.M. 1935; amd. Sec. 70, Ch. 431, L. 1975; R.C.M. 1947, 7-106.

32-2-206. Directors and officers. (1) The conduct and management of the affairs and business of such association shall be vested in a board of directors which shall consist of not less than five or more than nine members.

(2) The incorporators of the association shall serve as directors until the first meeting of the stockholders to be held at the time provided for by this chapter or until their successors are elected and qualified, after which the directors shall be elected by the stockholders of the association in accordance with the provisions of this chapter and the bylaws of the association.

(3) The directors, unless it is otherwise provided by the bylaws of the association, shall elect or appoint all the officers of the association. Such directors when appointed or elected shall file with the department their oath of office, as provided in election or appointment of bank directors. Meetings of the board of directors must be held at least once each month.

History: En. Sec. 7, Ch. 57, L. 1927; re-en. Sec. 6355.7, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-107.

32-2-207. Removal of directors. No director shall be removed from office except as herein provided or by a vote of the stockholders holding two-thirds of the capital stock at a general meeting held after previous notice given in the manner provided in 32-2-209. Meetings of the stockholders for this purpose may be called by the president or by a majority of the directors or by stockholders holding not less than 25% of the capital stock.

History: En. Sec. 8, Ch. 57, L. 1927; re-en. Sec. 6355.9, R.C.M. 1935; R.C.M. 1947, 7-109.

32-2-208. Meetings of stockholders and directors. (1) The meetings of the stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(2) In its bylaws, such association shall provide for at least one regular meeting of stockholders annually. Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with 32-2-209. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned to do so by stockholders owning at least 25% of the issued stock. The secretary shall call special meetings in the same manner as provided in 32-2-209.

History: En. Sec. 9, Ch. 57, L. 1927; re-en. Sec. 6355.10, R.C.M. 1935; R.C.M. 1947, 7-110.

32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any such association, a notice stating the time and place of such meeting shall be deposited in the post office at the principal place of business of such association directed to each member at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any such meeting.

(2) In addition thereto notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication.

(3) In notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or matters to be considered at said meeting.

(4) All members of such association shall be entitled to vote at such meetings in person or by proxy.

History: En. Sec. 10, Ch. 57, L. 1927; re-en. Sec. 6355.11, R.C.M. 1935; R.C.M. 1947, 7-111.

32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every stockholder of such association a blank form of proxy, and the stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the stockholder until such proxy is revoked or another substituted.

History: En. Sec. 11, Ch. 57, L. 1927; re-en. Sec. 6355.12, R.C.M. 1935; amd. Sec. 29, Ch. 71, L. 1977; R.C.M. 1947, 7-112.

32-2-211. Transfer of stock — effect. The delivery of a stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

History: En. Sec. 14, Ch. 57, L. 1927; re-en. Sec. 6355.15, R.C.M. 1935; R.C.M. 1947, 7-116.

32-2-212. Requirements of transfer in certain cases. When a certificate of stock in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee, or transferee of such shares or the legal representatives of the owners of such shares, in case of his or her death before the transfer, and also to protect such association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If such affidavit or other evidence or bond be not furnished when required as herein provided, neither such association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association.

History: En. Sec. 15, Ch. 57, L. 1927; re-en. Sec. 6355.16, R.C.M. 1935; R.C.M. 1947, 7-117.

32-2-213 through 32-2-220 reserved.

32-2-221. Foreign associations — requirements. (1) An association, as defined in 32-2-103, organized under the laws of any other state, of the United States, or of any foreign government shall, before doing business in this state, file with the secretary of state and the department a duly authenticated copy of their charter, articles of incorporation, or articles of agreement and also a statement, verified by oath of the president and secretary of the corporation or managing officials if other than a corporation and duly verified, showing:

(a) the name of the association and the location of its principal office or place of business outside this state and the location of the place of business or principal office in this state;

(b) the names and residences of the officers, trustees, or directors;

(c) the amount of capital stock;

(d) the amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, signed by its president, vice-president, or other acting head and by its secretary, if there is one, certifying that the association has consented to all the license laws and other laws of this state relative to foreign associations and has consented to be sued in the courts of this state upon all causes of action arising against it in this state and that service of process may be made upon a citizen of this state, whose name and place of residence shall be designated in the certificate. Service of process on that agent is valid service on the association.

History: En. Sec. 29, Ch. 57, L. 1927; re-en. Sec. 6355.30, R.C.M. 1935; amd. Sec. 80, Ch. 431, L. 1975; R.C.M. 1947, 7-131.

32-2-222. Consent of agent. The written consent of the person so designated to act as agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof or of a consent executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

History: En. Sec. 30, Ch. 57, L. 1927; re-en. Sec. 6355.31, R.C.M. 1935; R.C.M. 1947, 7-132.

32-2-223. Contracts void if made before compliance with law. If any such foreign association shall attempt or commence to do business in this state without having first filed said statement, certificate, and consent required by this chapter or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by them or any agent or agents thereof during said time shall be enforceable by them until the foregoing provisions have been complied with.

History: En. Sec. 31, Ch. 57, L. 1927; re-en. Sec. 6355.32, R.C.M. 1935; R.C.M. 1947, 7-133.

32-2-224. Shares of stock subject to attachment. The stock or shares of such foreign associations doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic associations.

History: En. Sec. 32, Ch. 57, L. 1927; re-en. Sec. 6355.33, R.C.M. 1935; R.C.M. 1947, 7-134.

32-2-225 through 32-2-230 reserved.

32-2-231. Consolidation and transfer — branching prohibited. (1) Only building and loan associations organized and chartered under the laws of the state of Montana may, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. Any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors and ratified by a two-thirds vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is pro-

hibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited.

(3) Insofar as this section limits or reduces the rights, powers, or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to April 14, 1977.

History: (1), (2)En. as Subd. 22, 7-113, by Sec. 1, Ch. 168, L. 1931; repealed by Sec. 4, Ch. 11, L. 1933; re-en. Sec. 1, Ch. 11, L. 1933; Sec. 7-113(22), R.C.M. 1947; amd. and redes. 7-113.2 by Sec. 73, Ch. 431, L. 1975; amd. Sec. 1, Ch. 363, L. 1977; Sec. 7-113.2, R.C.M. 1947; (3)En. 7-113.3 by Sec. 2, Ch. 363, L. 1977; Sec. 7-113.3, R.C.M. 1947; R.C.M. 1947, 7-113.2, 7-113.3.

Part 3

Department of Business Regulation Responsibility

32-2-301. Examinations by department. The department shall examine all building and loan associations doing business in this state at least once a year. Also, when the holders of 10% of the subscribed stock of an association file a written application with the department requesting it to make a special examination of an association, it shall make the examination immediately. The expense of the examiner making the examination shall be paid by the association examined, and the examiner's finding shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this chapter.

History: En. Sec. 23, Ch. 57, L. 1927; re-en. Sec. 6355.24, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1955; amd. Sec. 77, Ch. 431, L. 1975; R.C.M. 1947, 7-125.

32-2-302. Reports and accounts prescribed by department. The department may prescribe and supervise a uniform system of reports and accounting for all associations. The department shall have access to and may compel the production of all books, papers, securities, and moneys of any association under examination. It may administer oaths to and examine the officers and agents of the association and its affairs.

History: En. Sec. 24, Ch. 57, L. 1927; re-en. Sec. 6355.25, R.C.M. 1935; amd. Sec. 78, Ch. 431, L. 1975; R.C.M. 1947, 7-126.

32-2-303. Reports of condition — contents — publication. When requested to do so by the department, a building and loan association shall make to the department a report of condition, according to the form which may be prescribed by the department. The report shall be verified by the oath or affirmation of the president, vice-president, or secretary of the association and attested by the signature of at least two of the directors. The report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified and shall be transmitted to the department within 5 days after the receipt of a request or requisition for it from the department and in a form which may be required by the department. It shall be published as soon as possible in a newspaper in the place where the association is established or, if there is no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. Proof of publication shall be furnished at the times and in the manner which may be required by the department.

History: En. Sec. 25, Ch. 57, L. 1927; re-en. Sec. 6355.26, R.C.M. 1935; amd. Sec. 79, Ch. 431, L. 1975; R.C.M. 1947, 7-127.

32-2-304. Removal of directors, officers, or employees. Any director, officer, or employee of any association found by the department after examination to be dishonest shall be removed from office by the board of directors of such association on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such association thereafter by reason of the dishonesty of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them or any of them for recovery of such losses.

History: En. Sec. 26, Ch. 57, L. 1927; re-en. Sec. 6355.27, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-128.

32-2-305. Department to approve contracts paying income to person other than association — penalty for not securing. No fiscal agency or promotion contract or any other contract or arrangement, whereby the membership fee or any other income properly payable to the association, or any part thereof, is payable to an agent or other contracting party or otherwise than to the association or whereby any part of the business of the association or the management or conduct of its affairs or the expense of them is contracted to another, may be entered into or allowed until it has been submitted to the department and by it approved in writing. That contract may not be extended without the department's approval. The contract or the extension of the contract not first approved is void. A person operating under the contract or extension not first approved or taking or receiving income properly payable to the association without approval is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 154, L. 1931; re-en. Sec. 6355.8, R.C.M. 1935; amd. Sec. 71, Ch. 431, L. 1975; R.C.M. 1947, 7-108.

32-2-306. Department report. The department shall preserve in permanent form a full record of its proceedings, including a concise statement of each association examined, and it shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with those suggestions as it considers expedient. The report shall also include the information contained in the statement required of the association, arranged in tabulated form.

History: En. Sec. 36, Ch. 57, L. 1927; re-en. Sec. 6355.37, R.C.M. 1935; amd. Sec. 82, Ch. 431, L. 1975; R.C.M. 1947, 7-138.

32-2-307. Reports and examinations by department confidential. (1) An employee or agent of the department who fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of that officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of the association shall be removed from office and shall be fined not more than $500 or imprisoned in the penitentiary not less than 2 years or more than 5 years, or both.

(2) Nothing in this section prevents the proper exchange of information relating to building and loan associations and their business with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of an individual, association, or company be disclosed.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).

32-2-308. Membership in federal home loan bank. (1) An association, the officers or agents thereof, and the department may do anything necessary to enable a building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States.

(2) The department, on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to an association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from a federal home loan bank.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).

32-2-309. Insolvency or impairment of association — powers of department. (1) When it appears to the department that the affairs of a building and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the department may take possession of all books, records, and assets of every description of the association and retain possession of them pending the further proceedings specified in this section.

(2) If the board of directors, secretary, or person in charge of the association refuses to permit the department to take possession, the department shall communicate that fact to the attorney general. The attorney general shall at once institute the proceedings necessary to place the department in immediate possession of the property of the association.

(3) Upon taking possession of the effects of the association, the department shall prepare a full and true statement of the affairs and condition of the association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues, and claims belonging to it and pay the immediate and reasonable expenses of the department's trust.

(4) When the condition of the association has been fully ascertained and it appears that the affairs of the association are in fact in an unsound condition, the department shall at once notify, in writing, the board of directors of the association of its decision, giving them 20 days in which to restore the affairs of the association to sound condition.

(5) Meanwhile, the department shall remain in charge of the books, records, and assets of every description of the association, shall attend or be represented at all directors and stockholders meetings held, and shall suggest those steps it considers necessary to restore the association to a sound condition.

(6) If the association is not restored to a sound condition within 20 days, the department shall report the facts to the attorney general. The attorney general shall institute proceedings in the district court of the county in which the association has its principal place of business for the appointment of the department as receiver.

(7) As receiver, the department may collect all moneys due the association and may do those other acts which are necessary to conserve its assets and business, and it shall liquidate the association's affairs. The department may, except as otherwise limited by the terms of this chapter, do any acts necessary or, in its discretion, desirable for the protection of the property and assets of the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors or for the resumption of business of the association where that is practicable or desirable. The department may institute in its own name or in the name of the association those legal proceedings it considers expedient for those purposes.

(8) By applying to the district court of the county in which the association is located, or to the judge thereof in chambers, the department may, upon sufficient

showing of cause, obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell any of the assets. The sale may be made to stockholders, officers, directors, or others interested in the association, on consent of the court. On the proceedings the association shall be made a party by notice issued on order of the court or judge, in place of summons but served in like manner. The hearing of the application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the association has had 5 days' notice of the application.

History: En. Sec. 48, Ch. 57, L. 1927; re-en. Sec. 6355.49, R.C.M. 1935; amd. Sec. 86, Ch. 431, L. 1975; R.C.M. 1947, 7-150.

Part 4

Operation and Regulation

32-2-401. Powers and duties of building and loan associations. A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to members on the terms and conditions the constitution and bylaws provide, but an association may not issue preferred stock;

(7) assess and collect from members dues on stock and interest on loans at the times and in the amount provided for in the constitution and bylaws;

(8) permit members to withdraw all or part of their stock credits at the times and upon the terms as the constitution and bylaws may provide;

(9) cancel shares of stock upon which all credits have been withdrawn or upon which loans have been canceled or stock upon which no payments have been made for a period of 6 months, by returning to the stockholders all credits, if any, and reissue the shares as new stock;

(10) issue stock to minors and permit it to be withdrawn as other stock. The receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) acquire, hold, encumber, and convey that real estate and personal property necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

(13) make loans to members on the security of the shares of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes but not on farm lands or mining property, for not to exceed 75% of the actual value of the real estate and upon the terms and conditions which may be provided in the constitution and bylaws;

(14) cancel those loans and release the securities on those terms the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make a semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock, and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by constitution and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

32-2-402. Limit on interest and penalties. (1) The combined total of the amounts paid to an association for interest, commission, bonus, discount, and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest, principal payments, or both, from the time those interest payments are due. Interest not exceeding the lawful contract rate may also be charged and collected on delinquent stock payments when those unpaid payments are credited with dividends. The interest shall in no event be at a rate exceeding the rate percent of the dividend declared on the same unpaid stock payments.

(2) An association may not charge or collect from a stockholder, member, or borrower any fines, premiums, or penalties of any kind; except that a late payment penalty not to exceed $5 may be charged for payments more than 15 days late.

(3) An officer, agent, or employee of an association collecting or attempting to collect a penalty, fine, or premium of any kind, except the late payment penalty, or interest at a rate higher than provided in the note or other evidence of debt or in this chapter is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

32-2-403. Statement of interest rates — canceling loans. (1) Where the promissory note or other written evidence of the loan made by a building and loan association requires the payment of the loan or total aggregate sum of principal and interest in periodic installments, the promissory note or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(2) A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

32-2-404. Stock withdrawal. (1) No charge or fee, except as provided in this section, may be made against a member who withdraws his stock, after having given 30 days' notice of the withdrawal. No fine of any description may be made upon the par value of that stock or upon the declared dividends because of the withdrawal. A member who withdraws his stock or whose stock is matured is entitled to receive all dues paid in and all dividends declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the par value of each share of stock, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the stock.

(2) Applications for withdrawal shall be registered on the books of the association in the order received and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured stock and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than $100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

32-2-405. Pledging association assets. (1) The assets and securities of an association may not be pledged to secure its borrowed money or for any other purpose without the consent of the department. However, if the department determines that it is advisable to pledge assets in order that funds may be secured, it may authorize the pledging. The margin of security pledged may not exceed 25% of the funds so borrowed except when funds are borrowed from the federal home loan bank.

(2) An association may borrow money from the federal home loan bank upon the terms required by the federal home loan bank, may execute the promissory note of the corporation for the loan, and may pledge any of the assets of the corporation to secure the repayment of the loan, with interest, in accordance with the Federal Home Loan Bank Act and the rules adopted under it.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate which has been sold under contract, including suburban homes but not including farm lands or mining property. However, the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed 15% of its assets. The amount so.invested may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property so purchased, whichever is the lesser;

(e) other bonds and securities, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it shall be lawful for any building and loan association and other financial institution operating under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the Home Owners' Loan Corporation, in debentures issued by the federal housing administrator, and in obligations of National Mortgage Associations.

History: (1), (2)En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; Sec. 7-113, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 7-113(part), 35-142(part).

32-2-407. Real estate loans limited by congress. Building and loan associations and savings and loan associations, organized and operating under the laws of the state of Montana and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment permitted prior to July 1, 1963, make any real estate loan upon terms and conditions set by the department but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-113.1.

32-2-408. Bonds of officers, agents, and employees. The board of directors of every building and loan association shall require that all officers, agents, and employees of building and loan associations whose duties include the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties shall be subject to approval by the department. The bonds shall be in a form which shall be provided and approved by the department, and the bonds shall be approved by the president of the building and loan association and his action reported to the board of directors. All bonds required by this section shall be kept in the custody of the building and loan association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given.

History: En. Sec. 16, Ch. 57, L. 1927; amd. Sec. 1, Ch. 5, L. 1933; re-en. Sec. 6355.17, R.C.M. 1935; amd. Sec. 74, Ch. 431, L. 1975; R.C.M. 1947, 7-118.

32-2-409. Employment of agents — licenses and revocation thereof. (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association unless he is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any association unless he is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last 12 months, and other information the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock, it shall issue the license. The department, upon 10 days' notice to an agent and after a hearing, may revoke the license of an agent upon the following grounds:

(a) misrepresentation;

(b) conviction in any court for violation of the criminal statutes;

(c) evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock.

(3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of $2.

History: En. Sec. 17, Ch. 57, L. 1927; re-en. Sec. 6355.18, R.C.M. 1935; amd. Sec. 75, Ch. 431, L. 1975; R.C.M. 1947, 7-119.

32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the stock. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the book value of the stock as aforesaid, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount.

History: En. Sec. 18, Ch. 57, L. 1927; re-en. Sec. 6355.19, R.C.M. 1935; R.C.M. 1947, 7-120.

32-2-411. Payment of expenses — losses — dividends — reserve fund. (1) All expenses of any such association shall be paid out of the earnings only, in such manner as may be provided in its bylaws. The charges incident to a loan, if paid by the borrower, shall be deemed a part of the current expenses.

(2) Associations so desiring may annually or semiannually credit to a reserve fund the net earnings remaining after the payment of expenses and dividends and after crediting the contingent fund with the amount required by law, provided the amount so credited to the reserve fund in any fiscal year shall not exceed 1% of the book value of the outstanding stock. The reserve fund shall not exceed 5% of the book value of the outstanding stock. The reserve fund so created may be used for the payment of dividends, provided:

(a) the amount of the reserve fund so used shall not exceed 1% of the book value of the outstanding stock in any year; and

(b) that should the contingent fund of an association become exhausted, then no part of the reserve fund may be used for the payment of dividends and in the discretion of such association such reserve fund or the part thereof it shall deem necessary shall be credited to the contingent fund.

(3) Dividends shall be declared semiannually from the net earnings of the association and shall be paid or credited to all stockholders at such time and in such manner as provided in the constitution and bylaws.

(4) Losses in excess of the contingent fund and reserve fund shall be assessed pro rata in the same proportion and manner on all stockholders, to the extent only of their stock credits in such association.

History: En. Sec. 19, Ch. 57, L. 1927; amd. Sec. 1, Ch. 167, L. 1931; re-en. Sec. 6355.20, R.C.M. 1935; R.C.M. 1947, 7-121.

32-2-412. Annual statements. Every building and loan association doing business in this state shall annually, on June 30 or within 20 days thereafter, make a full detailed report, in writing, of the affairs and business of the association for the fiscal year ending on said June 30, showing its financial condition at the end of said year.

History: En. Sec. 21, Ch. 57, L. 1927; re-en. Sec. 6355.22, R.C.M. 1935; R.C.M. 1947, 7-123.

32-2-413. Form of statement — where filed. The statement shall be in such form and contain such information as may be prescribed by the department. It shall be sworn to by the secretary of such association and its correctness attested by at least three directors or an auditing committee appointed by the board of directors. The original shall be filed with the department within 20 days after the close of the fiscal year, and such an abstract thereof as the department may require shall be posted for 60 days in the office or meeting place of such association and also published once in the newspaper published in the town in which the association is located or, if no newspaper is published in the town in which association is located, then in one published nearest thereto in the same county, and such proof of publication shall be furnished at such times and in such manner as may be required by the department.

History: En. Sec. 22, Ch. 57, L. 1927; re-en. Sec. 6355.23, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-124.

32-2-414. Interest or commissions not included in profits. Interest or commissions unpaid, although due or accrued, on debts owing to any building and loan association shall not be included in calculation of its profits.

History: En. Sec. 40, Ch. 57, L. 1927; re-en. Sec. 6355.41, R.C.M. 1935; R.C.M. 1947, 7-142.

32-2-415. Limitation on loans. The total liabilities of any person, partnership, or corporation to any association for money borrowed, however secured, including in the liabilities of a partnership, the liabilities of the several members thereof, shall at no time exceed 20% of the amount of the assets of such association.

History: En. Sec. 41, Ch. 57, L. 1927; re-en. Sec. 6355.42, R.C.M. 1935; R.C.M. 1947, 7-143.

32-2-416. Joint ownership. Any building and loan association may issue shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder.

History: En. Sec. 42, Ch. 57, L. 1927; re-en. Sec. 6355.43, R.C.M. 1935; R.C.M. 1947, 7-144.

32-2-417. Trust — payment. Whenever any shares of stock shall be purchased in any building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased.

History: En. Sec. 43, Ch. 57, L. 1927; re-en. Sec. 6355.44, R.C.M. 1935; R.C.M. 1947, 7-145.

32-2-418. Shares held by minor. Whenever any shares of stock in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the shares of stock shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such shares of stock to the association.

History: En. Sec. 44, Ch. 57, L. 1927; re-en. Sed. 6355.45, R.C.M. 1935; R.C.M. 1947, 7-146.

32-2-419. Checking accounts prohibited. No building and loan association shall carry any demand, commercial, or checking account or receive any sum of money on deposit.

History: En. Sec. 46, Ch. 57, L. 1927; re-en. Sec. 6355.47, R.C.M. 1935; R.C.M. 1947, 7-148.

32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944. (1) All building and loan associations organized under the laws of the state of Montana are hereby empowered to make any loan which is guaranteed in whole or in part by the United States or any federal agency or federal instrumentality thereof under the Servicemen's Readjustment Act of 1944 or any amendment thereto, enacted by the congress of the United States, provided such loan shall be secured by either a first or second mortgage on real estate.

(2) Insofar as the provisions of this section are inconsistent with the provisions of any other law governing building and loan associations, the provisions of this section shall control.

History: En. Secs. 1, 2, Ch. 35, L. 1945; R.C.M. 1947, 7-158, 7-159.

32-2-421 through 32-2-430 reserved.

32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any regular or called meeting of the stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10 days after its passage.

The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members or to any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and then the stock in the association upon which no loans have been made, the same to be paid pro rata.

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by and shall be under the supervision of the department.

History: En. Sec. 47, Ch. 57, L. 1927; re-en. Sec. 6355.48, R.C.M. 1935; amd. Sec. 85, Ch. 431, L. 1975; R.C.M. 1947, 7-149.

32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting.

History: En. Sec. 1, Ch. 4, L. 1935; re-en. Sec. 6355.50, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-151.

32-2-433 through 32-2-440 reserved.

32-2-441. Conversion into federal savings and loan associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders of any such association or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders, by an affirmative vote of the majority of the shareholders, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take any action necessary to make it a federal savings and loan association, and within 10 days after receipt of the federal charter there shall be filed with the department a copy

of the charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

History: En. Sec. 1, Ch. 174, L. 1935; re-en. Sec. 6374.8, R.C.M. 1935; amd. Sec. 31, Ch. 71, L. 1977; R.C.M. 1947, 7-156.

32-2-442. Effect of conversion of association — powers and privileges. At the time when such conversion becomes effective as hereinbefore provided, said association shall cease to be supervised by this state and all of the property of such association, including all of its right, title, and interest in and to all property of every kind and character whether real, personal, or mixed, shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction. Said federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a state association. Said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place; it being expressly declared that the federal savings and loan association shall be merely a continuation of the state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

History: En. Sec. 2, Ch. 174, L. 1935; re-en. Sec. 6374.9, R.C.M. 1935; R.C.M. 1947, 7-157.

Part 5

National Housing Act Loans

32-2-501. Associations empowered to make loans on securities authorized by National Housing Act. Subject to such regulations as may be prescribed by the federal housing administrator, pursuant to an act of congress cited as the "National Housing Act", approved by the president on June 27, 1934, and all amendments thereto as well as any amendments hereafter duly passed and approved, building and loan associations qualified to do business in this state are hereby empowered to make such loans, secured by mortgages upon real estate, and other advances of credit to members or others, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and stockholders' accounts, and other contracts as are now, or may hereafter be, authorized or provided for by said National Housing Act and any amendments thereof duly passed and approved.

History: En. Sec. 1, Ch. 38, L. 1935; re-en. Sec. 6356.1, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1943; R.C.M. 1947, 7-153.

32-2-502. Transactions exempt from operation of state laws. All loans, charges, investments, advances of credit, purchases, sales, contracts for insurance of mortgages and stockholders' accounts, and other contracts made pursuant to the powers granted in 32-2-501 through 32-2-503 shall be exempt from the operation and application of the general statutes of this state in conflict with said National Housing Act and the regulations issued thereunder.

History: En. Sec. 2, Ch. 38, L. 1935; re-en. Sec. 6356.2, R.C.M. 1935; R.C.M. 1947, 7-154.

32-2-503. Application of sections. The provisions of 32-2-501 through 32-2-503 shall apply only to loans, advances of credit, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and accounts of stockholders, and other contracts made in connection with and incidental to loans secured by mortgages and to advances of credit, insured or to be insured, and accounts, insured or to be insured, under the provisions of said National Housing Act and amendments thereof duly passed and approved.

History: En. Sec. 3, Ch. 38, L. 1935; re-en. Sec. 6356.3, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1943; R.C.M. 1947, 7-155.

CHAPTER 3

CREDIT UNIONS

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Part 1

General Provisions

32-3-101. Short title. This chapter shall be known and may be cited as the "Montana Credit Union Act".

History: En. 14-601 by Sec. 1, Ch. 38, L. 1975; R.C.M. 1947, 14-601.

32-3-102. Definition and purposes. A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History: En. 14-602 by Sec. 2, Ch. 38, L. 1975; R.C.M. 1947, 14-602.

32-3-103. Use of name exclusive. With the exception of a credit union organized under the provisions of this chapter or of any other credit union act or an association of credit unions or a recognized chapter thereof, any person, corporation, partnership, or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than $500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name.

History: En. 14-606 by Sec. 6, Ch. 38, L. 1975; R.C.M. 1947, 14-606.

32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of business regulation.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

History: En. 14-607 by Sec. 7, Ch. 38, L. 1975; R.C.M. 1947, 14-607.

32-3-105. Fiscal year. The fiscal year of each credit union organized under this chapter shall end on December 31.

History: En. 14-608 by Sec. 8, Ch. 38, L. 1975; R.C.M. 1947, 14-608.

32-3-106. Instruction in schools. With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state.

History: En. 14-675 by Sec. 75, Ch. 38, L. 1975; R.C.M. 1947, 14-675.

Part 2

Regulation

32-3-201. Director of the department of business regulation. (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this chapter.

(2) The director may prescribe rules for the administration of this chapter and may establish chartering, supervisory, and examination fees.

(3) The director shall, from time to time, issue rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

History: En. 14-609 by Sec. 9, Ch. 38, L. 1975; R.C.M. 1947, 14-609.

32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the director annually on or before February 1 on forms supplied by him for that purpose. Additional reports may be required.

(2) A fine of $5 for each day a report is in arrears shall be levied against the offending credit union unless it is excused for cause by the director.

History: En. 14-610 by Sec. 10, Ch. 38, L. 1975; R.C.M. 1947, 14-610.

32-3-203. Examinations. (1) The department of business regulation shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control; and for the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination shall be forwarded to the executive officer of each credit union promptly after completion. The report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committeemen shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit shall be borne by the credit union.

History: En. 14-611 by Sec. 11, Ch. 38, L. 1975; R.C.M. 1947, 14-611.

32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with such rules as the director from time to time prescribes. In prescribing such rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

History: En. 14-612 by Sec. 12, Ch. 38, L. 1975; R.C.M. 1947, 14-612.

32-3-205. Suspension. (1) If it appears that any credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the director of the department of business regulation shall issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors shall be given notice by certified or registered mail of such suspension, which notice shall include a list of the reasons for such suspension and/or a list of the specific violations of this chapter.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file

with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

History: En. 14-664 by Sec. 64, Ch. 38, L. 1975; R.C.M. 1947, 14-664.

32-3-206. Authorized activities of credit unions. The director may authorize any credit union to engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include, but not by way of limitation, the power to do any act and own, possess, and carry as assets property of such character including stocks, bonds, or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in 32-3-304. Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by the issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state.

History: En. 14-676 by Sec. 76, Ch. 38, L. 1975; R.C.M. 1947, 14-676.

Part 3

Organization, Membership, and Dissolution

32-3-301. Organization procedure. (1) Any seven or more residents of this state, of legal age, who have a common bond defined in 32-3-304, may organize a credit union and become charter members thereof by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms thereof, which articles shall state:

(a) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which shall be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union shall be organized under this chapter for the purposes set forth therein;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which shall be not less than $5; and

(f) that the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers which are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the same in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the director of the department of business regulation.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of business regulation. The director may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The application shall be acted upon within 30 days. The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

History: En. 14-603 by Sec. 3, Ch. 38, L. 1975; R.C.M. 1947, 14-603.

32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the director of the department of business regulation shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

History: En. 14-604 by Sec. 4, Ch. 38, L. 1975; R.C.M. 1947, 14-604.

32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of business regulation who shall approve or disapprove the amendments within 60 days.

(2) Amendments shall become effective upon:

(a) approval in writing by the director, for which no fee may be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

History: En. 14-605 by Sec. 5, Ch. 38, L. 1975; amd. Sec. 32, Ch. 71, L. 1977; R.C.M. 1947, 14-605.

32-3-304. Membership defined. (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one or more shares and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association, or interests or employees of a common employer

and members of the immediate family of such persons, provided that mere residence in a community may not establish a common bond of association or interest.

History: En. 14-615 by Sec. 15, Ch. 38, L. 1975; R.C.M. 1947, 14-615.

32-3-305. Societies — associations. Societies and partnerships composed primarily of individuals who are eligible for membership and corporations whose stockholders are composed primarily of such individuals may be admitted to membership in the same manner and under the same conditions as individuals but may not borrow in excess of their shareholdings.

History: En. 14-616 by Sec. 16, Ch. 38, L. 1975; R.C.M. 1947, 14-616.

32-3-306. Other credit unions. Any credit union organized under this chapter may permit membership of any other credit union organized under this chapter or other laws.

History: En. 14-617 by Sec. 17, Ch. 38, L. 1975; R.C.M. 1947, 14-617.

32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the director of the department of business regulation, for whom credit union services are otherwise unavailable.

History: En. 14-618 by Sec. 18, Ch. 38, L. 1975; R.C.M. 1947, 14-618.

32-3-308. Members who leave field. Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

History: En. 14-619 by Sec. 19, Ch. 38, L. 1975; R.C.M. 1947, 14-619.

32-3-309. Liability of members. The members of the credit union shall not be personally or individually liable for the payment of its debts.

History: En. 14-620 by Sec. 20, Ch. 38, L. 1975; R.C.M. 1947, 14-620.

32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(2) At all such meetings a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

History: En. 14-621 by Sec. 21, Ch. 38, L. 1975; R.C.M. 1947, 14-621.

32-3-311 through 32-3-320 reserved.

32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of business regulation thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, he shall execute a certificate of dissolution on a form prescribed by the department and file the same with the department, together with all pertinent books and records of the liquidating credit union, whereupon such credit union shall be dissolved.

History: En. 14-665 by Sec. 65, Ch. 38, L. 1975; amd. Sec. 33, Ch. 71, L. 1977; R.C.M. 1947, 14-665.

32-3-322. Merger. (1) Any credit union may, with the approval of the director of the department of business regulation and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;
(c) a copy of the resolution or other action by which the plan was agreed upon;
(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and
(e) the vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the director, certified by him, and returned to both credit unions within 30 days.

(4) Upon return of the certificate from the director, all property rights and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed whenever possible to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law.

History: En. 14-666 by Sec. 66, Ch. 38, L. 1975; R.C.M. 1947, 14-666.

32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of business regulation.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of business regulation and file proof of such compliance with said director.

History: En. 14-667 by Sec. 67, Ch. 38, L. 1975; R.C.M. 1947, 14-667.

Part 4

Operation and Officers

32-3-401. General powers. A credit union may:
(1) make contracts as provided for in this chapter;
(2) sue and be sued;
(3) adopt and use a common seal and alter same;
(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;
(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
(6) receive savings from its members in the form of shares or special-purpose thrift accounts;
(7) lend its funds to its members as hereinafter provided;
(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;
(9) discount and sell any eligible obligations, subject to rules prescribed by the director;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;

(11) invest surplus funds as provided in this chapter;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse moneys in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for such services, but not including checking account services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations as are prescribed by the director; or

(20) purchase or make available insurance for its directors, officers, agents, employees, and members.

History: En. 14-613 by Sec. 13, Ch. 38, L. 1975; R.C.M. 1947, 14-613.

32-3-402. Incidental powers. A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state, including those that are necessary to enable it to promote and carry on most effectively its purposes.

History: En. 14-614 by Sec. 14, Ch. 38, L. 1975; R.C.M. 1947, 14-614.

32-3-403. Election or appointment of officials. (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for such terms as the bylaws provide.

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, a credit manager.

History: En. 14-622 by Sec. 22, Ch. 38, L. 1975; R.C.M. 1947, 14-622.

32-3-404. Record of board and committee members. Within 15 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union shall be filed with the department of business regulation on forms provided by the department.

History: En. 14-623 by Sec. 23, Ch. 38, L. 1975; R.C.M. 1947, 14-623.

32-3-405. Vacancies. The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

History: En. 14-624 by Sec. 24, Ch. 38, L. 1975; R.C.M. 1947, 14-624.

32-3-406. Compensation of officials. No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident, and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

History: En. 14-625 by Sec. 25, Ch. 38, L. 1975; R.C.M. 1947, 14-625.

32-3-407. Conflicts of interest. No director, committee member, officer, agent, or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

History: En. 14-626 by Sec. 26, Ch. 38, L. 1975; R.C.M. 1947, 14-626.

32-3-408. Executive officers. (1) At their organization meeting and within 15 days following each annual meeting of the members, the directors shall elect from their own number:

(a) an executive officer, who may be designated as chairman of the board or president;

(b) a vice-chairman of the board or one or more vice-presidents;

(c) a treasurer; and

(d) a secretary.

(2) The treasurer and the secretary may be the same individual.

(3) The persons so elected shall be the executive officers of the corporation.

(4) The terms of the officers shall be 1 year or until their successors are chosen and have duly qualified.

(5) The duties of the officers shall be prescribed in the bylaws.

(6) The board of directors may employ an officer in charge of operations, whose title shall be either president or general manager or president and general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

History: En. 14-627 by Sec. 27, Ch. 38, L. 1975; R.C.M. 1947, 14-627.

32-3-409. Authority of directors. The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

History: En. 14-628 by Sec. 28, Ch. 38, L. 1975; R.C.M. 1947, 14-628.

32-3-410. Executive committee. From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

History: En. 14-629 by Sec. 29, Ch. 38, L. 1975; R.C.M. 1947, 14-629.

32-3-411. Meetings of directors. The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly.

History: En. 14-630 by Sec. 30, Ch. 38, L. 1975; R.C.M. 1947, 14-630.

32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney-at-law, or other agent;

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

History: En. 14-631 by Sec. 31, Ch. 38, L. 1975; amd. Sec. 45, Ch. 359, L. 1977; R.C.M. 1947, 14-631.

32-3-413. Authority of credit committee. The credit committee shall have the general supervision of all loans to members.

History: En. 14-632 by Sec. 32, Ch. 38, L. 1975; R.C.M. 1947, 14-632.

32-3-414. Meeting of credit committee. The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered.

History: En. 14-633 by Sec. 33, Ch. 38, L. 1975; R.C.M. 1947, 14-633.

32-3-415. Loan officers. (1) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

History: En. 14-634 by Sec. 34, Ch. 38, L. 1975; R.C.M. 1947, 14-634.

32-3-416. Credit manager. The credit committee may be dispensed with and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

History: En. 14-635 by Sec. 35, Ch. 38, L. 1975; R.C.M. 1947, 14-635.

32-3-417. Duties of supervisory committee. (1) The supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years.

History: En. 14-636 by Sec. 36, Ch. 38, L. 1975; R.C.M. 1947, 14-636.

32-3-418. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than 7 or more than 21 days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this chapter, the articles of incorporation, or the bylaws.

History: En. 14-637 by Sec. 37, Ch. 38, L. 1975; R.C.M. 1947, 14-637.

32-3-419. Calling of special meeting. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this chapter, the credit union's charter or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

History: En. 14-638 by Sec. 38, Ch. 38, L. 1975; R.C.M. 1947, 14-638.

Part 5

Shares and Accounts

32-3-501. Shares. (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in such manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

History: En. 14-639 by Sec. 39, Ch. 38, L. 1975; R.C.M. 1947, 14-639.

32-3-502. Dividends. (1) At such intervals and for such periods as the board of directors may authorize and after provision for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared.

(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.

(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 15 days of that month.

History: En. 14-640 by Sec. 40, Ch. 38, L. 1975; R.C.M. 1947, 14-640.

32-3-503. Thrift accounts. Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

History: En. 14-641 by Sec. 41, Ch. 38, L. 1975; R.C.M. 1947, 14-641.

32-3-504. Minors' accounts. Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

History: En. 14-642 by Sec. 42, Ch. 38, L. 1975; R.C.M. 1947, 14-642.

32-3-505. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

History: En. 14-643 by Sec. 43, Ch. 38, L. 1975; R.C.M. 1947, 14-643.

32-3-506. Trust accounts. (1) Shares may be issued in the name of a member in trust for a beneficiary, including a minor; but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary; and the credit union shall be under no obligation to see the application of such payment.

(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.

History: En. 14-644 by Sec. 44, Ch. 38, L. 1975; R.C.M. 1947, 14-644.

32-3-507. Liens. The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint, or trust account for any sum past due the credit union from said member or for any loan endorsed by him.

History: En. 14-645 by Sec. 45, Ch. 38, L. 1975; R.C.M. 1947, 14-645.

32-3-508. Dormant accounts. (1) If a credit union is unable to contact a member, beneficiary, or other person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.

(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).

History: En. 14-646 by Sec. 46, Ch. 38, L. 1975; R.C.M. 1947, 14-646.

32-3-509. Reduction in shares. (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

History: En. 14-647 by Sec. 47, Ch. 38, L. 1975; R.C.M. 1947, 14-647.

Part 6

Loans and Insurance

32-3-601. Loans — purposes, terms, and interest rate. A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves at rates of interest not exceeding 1 ¼% per month on the unpaid monthly balances.

History: En. 14-648 by Sec. 48, Ch. 38, L. 1975; R.C.M. 1947, 14-648.

32-3-602. Loan application. Every application for a loan shall be made in writing upon a form which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired and the security, if any, offered. Each loan shall be evidenced by a written document.

History: En. 14-649 by Sec. 49, Ch. 38, L. 1975; R.C.M. 1947, 14-649.

32-3-603. Loan limit. No loan shall be made to any member in an aggregate amount in excess of 10% of the credit union's total assets.

History: En. 14-650 by Sec. 50, Ch. 38, L. 1975; R.C.M. 1947, 14-650.

32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor, or assignment of shares of wages, in a manner consistent with the laws of this state, shall be deemed security within the meaning of this chapter. The adequacy of any security shall be determined by the credit committee, credit manager, or loan officer, subject to this chapter and the bylaws.

History: En. 14-651 by Sec. 51, Ch. 38, L. 1975; R.C.M. 1947, 14-651.

32-3-605. Installments. A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

History: En. 14-652 by Sec. 52, Ch. 38, L. 1975; R.C.M. 1947, 14-652.

32-3-606. Line of credit. Upon their own motion or upon application by a member, the credit committee or credit manager may approve a line of credit in advance, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

History: En. 14-653 by Sec. 53, Ch. 38, L. 1975; R.C.M. 1947, 14-653.

32-3-607. Other loan programs. (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

History: En. 14-654 by Sec. 54, Ch. 38, L. 1975; R.C.M. 1947, 14-654.

32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:

(a) the loan complies with all lawful requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) any such loan or aggregate of loans to any one director or committee member which exceeds $2,500 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members, except when any such loan standing alone or when added to any outstanding loan or loans to the comaker,

guarantor, or endorser exceeds $2,500, approval of the board of directors is required.

History: En. 14-655 by Sec. 55, Ch. 38, L. 1975; R.C.M. 1947, 14-655.

32-3-609. Insurance for members. A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

History: En. 14-656 by Sec. 56, Ch. 38, L. 1975; R.C.M. 1947, 14-656.

32-3-610. Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

History: En. 14-657 by Sec. 57, Ch. 38, L. 1975; R.C.M. 1947, 14-657.

32-3-611. Share insurance. (1) Not later than January 1, 1976, each credit union shall apply for insurance on share accounts under the provisions of Title II of the Federal Credit Union Act. A credit union which has been denied a commitment for insurance of its share accounts shall either dissolve, merge with another credit union which is insured under Title II of the Federal Credit Union Act, or apply in writing within 30 days of denial to the director of the department of business regulation for additional time to obtain an insurance commitment.

(2) The director of the department of business regulation shall grant additional time for the credit union to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time or times shall not extend later than January 1, 1978.

(3) The director of the department of business regulation shall make available reports of condition and examination reports to the administrator of the national credit union administration and may accept any report of examination made on behalf of such administrators. The director may appoint the administrator of the national credit union administration as liquidating agent of an insured credit union.

History: En. 14-658 by Sec. 58, Ch. 38, L. 1975; R.C.M. 1947, 14-658.

Part 7

Investments and Reserves

32-3-701. Investment of funds. Funds not used in loans to members may be invested in:

(1) securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions thereof;

(3) certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) loans to or in shares or deposits of other credit unions;

(5) the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6) shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding 10% of the shares and surplus of the credit union;

(7) loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to 2% of the assets of the credit union.

History: En. 14-659 by Sec. 59, Ch. 38, L. 1975; R.C.M. 1947, 14-659.

32-3-702. Makeup of regular reserve. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then

(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then

(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.

(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.

History: En. 14-660 by Sec. 60, Ch. 38, L. 1975; R.C.M. 1947, 14-660.

32-3-703. Use of regular reserve. The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of business regulation.

History: En. 14-661 by Sec. 61, Ch. 38, L. 1975; R.C.M. 1947, 14-661.

32-3-704. Risk assets defined. For the purpose of establishing the reserves required, all assets except the following shall be considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets which are insured, fully guaranteed as to principal and interest, or due from the United States government, its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provision of Title IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in central credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments which deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) furniture and equipment; and

(12) land and buildings.

History: En. 14-662 by Sec. 62, Ch. 38, L. 1975; R.C.M. 1947, 14-662.

32-3-705. Special reserves. In addition to such regular reserve, special reserves to protect the interest of members shall be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of business regulation, in any special case, to be necessary for that purpose.

History: En. 14-663 by Sec. 63, Ch. 38, L. 1975; R.C.M. 1947, 14-663.

Part 8

Central Credit Unions

32-3-801. Organization. Any central credit union may be organized and operated under this chapter and subject to all such provisions not inconsistent with this chapter. Such credit union shall use the term "central" in its official name.

History: En. 14-668 by Sec. 68, Ch. 38, L. 1975; R.C.M. 1947, 14-668.

32-3-802. Membership. Membership in such central credit union may include, but not be limited to:

(1) credit unions organized and operating under this chapter or under any other credit union law;

(2) officers, directors, committee members, and employees of such credit unions; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state;

(3) organizations and associations of those persons or organizations enumerated in subsections (1) and (2);

(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;

(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or

(6) members of the immediate families of all members qualified above.

History: En. 14-669 by Sec. 69, Ch. 38, L. 1975; R.C.M. 1947, 14-669.

32-3-803. Voting representative. Each credit union becoming a member of such central credit union may designate one person to be its voting representative in the central credit union, which person shall be designated by the board of directors of the member credit union. Such voting representative shall be eligible to hold office in the central credit union as if such person were himself a member of the central credit union.

History: En. 14-670 by Sec. 70, Ch. 38, L. 1975; R.C.M. 1947, 14-670.

32-3-804. Additional rights and powers. (1) A central credit union shall have all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this section, notwithstanding any limitations or restrictions found elsewhere in this chapter.

(2) A central credit union may make loans to other credit unions, purchase shares of other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source and issue notes or debentures.

(5) A central credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors, elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act.

History: En. 14-671 by Sec. 71, Ch. 38, L. 1975; amd. Sec. 1, Ch. 111, L. 1977; R.C.M. 1947, 14-671.

Part 9

Taxation

32-3-901. Taxation. All credit unions organized under this or any other credit union law shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

History: En. 14-672 by Sec. 72, Ch. 38, L. 1975; R.C.M. 1947, 14-672.

32-3-902. Stock transfer taxes. The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

History: En. 14-673 by Sec. 73, Ch. 38, L. 1975; R.C.M. 1947, 14-673.

32-3-903. Effect of participation in government programs. The participation by a credit union in any government program providing unemployment, social security, old-age pension, or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

History: En. 14-674 by Sec. 74, Ch. 38, L. 1975; R.C.M. 1947, 14-674.

CHAPTER 4

DEVELOPMENT CREDIT CORPORATION ACT

Part 1 — General Provisions

Section

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Part 1

General Provisions

32-4-101. Definitions. As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "corporation"—a Montana development credit corporation created under this chapter;

(2) "financial institution"—any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(3) "member"—any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter;

(4) "board of directors"—the board of directors of the corporation created under this chapter;

(5) "loan limit"—for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter.

History: En. Sec. 2, Ch. 128, L. 1969; R.C.M. 1947, 15-2602.

32-4-102. Purpose. (1) The purposes of the corporation shall be to:

(a) promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens;

(b) encourage and assist through loans, investments, or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry;

(c) stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state;

(d) cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and

(e) provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(2) In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 35 the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969; R.C.M. 1947, 15-2601.

32-4-103. Credit of state not pledged. Under no circumstances is the credit of the state pledged herein.

History: En. Sec. 17, Ch. 128, L. 1969; R.C.M. 1947, 15-2617.

32-4-104. Application of corporation law. The provisions of Title 35 shall apply to the corporation insofar as they may be applicable and not inconsistent with this chapter.

History: En. Sec. 18, Ch. 128, L. 1969; R.C.M. 1947, 15-2618.

Part 2

Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation. Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development credit corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner:

(1) Such persons shall by articles of incorporation filed in the manner prescribed in Title 35, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Credit Corporation of Montana";

(b) the location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation; provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from the members, nonmember persons, firms, or corporations and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided that no loan to the corporation may be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency and city, state, and federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part thereof or interest therein of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder thereof exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price thereof;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of community affairs and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency, whether state, federal, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 35, so far as consistent with this chapter.

History: En. Sec. 3, Ch. 128, L. 1969; amd. Sec. 34, Ch. 71, L. 1977; R.C.M. 1947, 15-2603.

32-4-202. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969; R.C.M. 1947, 15-2615.

32-4-203. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this chapter. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this chapter, as set forth in 32-4-201.

History: En. Sec. 4, Ch. 128, L. 1969; R.C.M. 1947, 15-2604.

32-4-204. Effect of failure to commence business. If a corporation organized pursuant to this chapter shall fail to begin business within 5 years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969; R.C.M. 1947, 15-2616.

32-4-205. Amendment of articles of incorporation. (1) The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled, provided:

(a) that no amendment which is inconsistent with the general purposes expressed herein or which eliminates or curtails the obligation of the corporation to make reports as provided in 32-4-306 shall be made without amendment of this chapter; and

(b) that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; affects a member's right to withdraw from membership as provided in 32-4-303; or affects a member's voting rights as provided in 32-4-301 shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine them. If he finds that they conform to the requirements of this chapter, he shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state, and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969; R.C.M. 1947, 15-2605.

32-4-206. Board of directors. (1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of such number, not less than nine, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation.

(3) The directors need not be stockholders or members in the corporation.

(4) The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director.

(5) The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws.

(6) Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969; R.C.M. 1947, 15-2606.

32-4-207. First meeting of corporation. (1) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least 5 days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969; R.C.M. 1947, 15-2608.

32-4-208. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) all domestic corporations organized for the purpose of carrying on business within this state, including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) all financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) a financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed 10% of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: En. Sec. 9, Ch. 128, L. 1969; R.C.M. 1947, 15-2609.

Part 3

Operation and Regulation

32-4-301. Powers of stockholders and members. (1) The stockholders and the members of the corporation shall have the following powers of the corporation:

(a) to determine the number of and elect directors as provided in 32-4-206;
(b) to make, amend, and repeal bylaws;
(c) to amend the articles of incorporation as provided in 32-4-205;
(d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

(2) As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000 shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional $1,000 which such member is authorized to have outstanding on loans to the corporation at any one time as determined under 32-4-302(3)(b).

History: En. Sec. 7, Ch. 128, L. 1969; R.C.M. 1947, 15-2607.

32-4-302. Membership — limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this chapter. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) 20% of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(b) the following limit, to be determined as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership:

(i) 3% of the capital and surplus of commercial banks and trust companies;

(ii) 1% of the total outstanding loans made by a building and loan association;

(iii) 2% of the capital and unassigned surplus of stock insurance companies; and

(iv) such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by a member shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of not less than ½ of 1% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History: En. Sec. 10, Ch. 128, L. 1969; R.C.M. 1947, 15-2610.

32-4-303. Withdrawal of membership. (1) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation 2 years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

(2) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969; R.C.M. 1947, 15-2611.

32-4-304. Surplus. Each year the corporation shall set apart as earned surplus not less than 10% of its net earnings for the preceding fiscal year until such surplus shall be equal in value to 100% of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969; R.C.M. 1947, 15-2612.

32-4-305. Deposit of funds. (1) The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

(2) The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969; R.C.M. 1947, 15-2613.

32-4-306. Control — supervision — reports. The corporation is subject to the examination of the department of business regulation and shall make reports of its condition not less than annually to that department, which in turn shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 35.

History: En. Sec. 14, Ch. 128, L. 1969; amd. Sec. 87, Ch. 431, L. 1975; R.C.M. 1947, 15-2614.

CHAPTER 5

CONSUMER LOAN BUSINESSES

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Section

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Part 1

General Provisions

32-5-101. Short title. This chapter may be cited as the "Montana Consumer Loan Act".

History: En. Sec. 1, Ch. 283, L. 1959; R.C.M. 1947, 47-201.

32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" means one or both of the licenses provided for by this chapter.

(3) "Licensee" means the person holding a license.

(4) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans of $7,500 or less, generally repayable in substantially equal installments.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975; R.C.M. 1947, 47-202.

32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in amounts of $7,500 or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than 10% per annum, except as provided in and authorized by this chapter. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(3) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975; R.C.M. 1947, 47-204.

Part 2

Licensure Requirements

32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000 but not exceeding $7,500, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid into the state treasury by the department.

History: Ap. p. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975; Sec. 47-206, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-206.

32-5-202. Issuance or denial of license. (1) Within 30 days after an application for license is filed with the department together with the required fees, the department shall issue the license, if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this chapter, or enter an order denying the license, if it finds to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.

History: En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975; R.C.M. 1947, 47-207.

32-5-203. Conduct of other business in same office. A licensee may conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in or in association or conjunction therewith unless the department shall find, after a hearing, that the other business is of such nature that such conduct tends to conceal evasion of this chapter or of the rules made hereunder and shall order such licensee in writing to desist from such conduct.

History: En. Sec. 8, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-208.

32-5-204. License renewal fee. Every licensee shall, on or before December 1, pay to the department the sum of $125 for each license held as a license fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

History: En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977; R.C.M. 1947, 47-209.

32-5-205. Surrender of license. Any licensee may surrender any license by delivering it to the department with written notice thereon, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

History: En. Sec. 21, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-221.

32-5-206. Termination of license not to affect preexisting contract. No revocation, surrender, or expiration of any license shall impair or affect the obligation of any preexisting lawful contract.

History: En. Sec. 22, Ch. 283, L. 1959; R.C.M. 1947, 47-222.

32-5-207. Revocation and suspension of license. The department, upon 10 days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued.

History: En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975; R.C.M. 1947, 47-223.

32-5-208. Reinstatement. The department may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the department in refusing originally to issue such license. In any case where the license has been revoked for cause, no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

History: En. Sec. 24, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-224.

Part 3

Operation of Business — Restrictions and Requirements

32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding $300;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding $300 but not exceeding $500; and

(c) $12 per year per $100 on that part of the principal amount of the loan in excess of $500 but not exceeding $1,000.

(2) The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of $10 per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500.

(3) Charges in (1) and (2) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(4) On loans of $90 or less a licensee may charge, in lieu of charges specified in (1) of this section, not in excess of $1 for each $5 of cash or credit advanced to the borrower up to the amount of $90. A period of at least 15 days must be allowed for the repayment of each $5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over $90 or on any balance of $90 or less when the original loan was greater than $90.

(5) When any loan contract, new loan, renewal, or otherwise, is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(6) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(7) The licensee may collect from the borrower the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(8) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this chapter is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever.

History: Ap. p. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965; Sec. 47-210, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-210.

32-5-302. Installment payment — contract period. (1) No licensee may enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making;

(c) for more than $1,000 to and including $2,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making; or

(d) for more than $2,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977; R.C.M. 1947, 47-211.

32-5-303. Borrower to receive copy of contract or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, a copy of the loan contract or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

(4) the principal amount of the loan excluding charges;

(5) the rate or amount of charges as the contract may provide;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in 32-5-301(7);

(8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);

(9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(5) if such loan is prepaid in full.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part).

32-5-304. Receipts — return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made on account of any loan at the time such payment is made;

(2) endorse indelibly on a loan ledger or card, which shall be kept by the licensee, the amount and date of each payment made by the borrower of the loan;

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any

mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part).

32-5-305. Confessions of judgment — incomplete instruments forbidden. No licensee shall:

(1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges and in which blanks are left to be filled in after execution. However, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; or

(3) take any instrument in which blanks are left to be filled in after the loan is made.

History: En. Sec. 13, Ch. 283, L. 1959; R.C.M. 1947, 47-213.

32-5-306. Insurance. (1) No insurance of any kind shall be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan except as hereinafter provided.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges, such loan shall not in any event exceed $7,500.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker, or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this chapter.

(6) A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975; R.C.M. 1947, 47-214.

32-5-307. Records to be kept. Each licensee shall keep in each licensed office such books, accounts, and records as the department shall require and as are necessary to enable the department to determine whether the licensee is complying with this chapter and with the rules promulgated thereunder. The licensee shall preserve such records for at least 2 years after making the final entry on any loan recorded thereon.

History: En. Sec. 17, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-217.

32-5-308. Annual report. (1) A licensee shall annually before April 15 file a report for the preceding calendar year with the department.

(2) The report shall give information with respect to the financial condition of the licensee and shall include:

(a) the name and address of the licensee;

(b) balance sheets at the beginning and end of the calendar year;

(c) a statement of income and expenses;

(d) a reconciliation of surplus or net earnings with the balance sheets;

(e) a schedule of assets used in the consumer loan business;

(f) an analysis of charges, size of loans made, and types of security on loans;

(g) an analysis of suits and foreclosures; and

(h) other relevant information the department may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by the licensee in this state.

(3) The report shall be made under oath and be in a form prescribed by the department, which shall publish annually an analysis and summary of the reports.

History: En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975; R.C.M. 1947, 47-218.

32-5-309. Advertising — limitations. No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans.

History: En. Sec. 19, Ch. 283, L. 1959; R.C.M. 1947, 47-219.

32-5-310. Wage assignments — limitations. (1) The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be considered interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this chapter.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compen-

sation owing at the time of the notice to the debtor's employer and thereafter to become owing. However, no such assignment or order is valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such assignment or order is made. Only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security shall notice be given to the debtor's employer of such assignment or transfer. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of such loan and the amount due and unpaid thereon;

(c) a copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer.

History: En. Sec. 20, Ch. 283, L. 1959; amd. Sec. 37, Ch. 71, L. 1977; R.C.M. 1947, 47-220.

Part 4

Enforcement

32-5-401. Department — powers and duties — adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.

(2) All rules adopted under this chapter are binding on all licensees and enforceable by the department through the power of suspension or revocation of licenses.

History: En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975; R.C.M. 1947, 47-203.

32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1) a licensee;

(2) a person who advertises for, solicits, or holds himself out as willing to make loans in amounts of $7,500 or less; or

(3) a person whom the department has reason to believe is violating or is about to violate this chapter.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975; R.C.M. 1947, 47-215.

32-5-403. Annual examinations — cost. (1) The department shall make an annual examination of the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at the rate of $100 per man per day

required to conduct the examinations of the respective licensees. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-216.

32-5-404. Access to records — witnesses. For the purpose of this chapter the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records, the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records.

History: En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977; R.C.M. 1947, 47-226.

32-5-405. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation.

(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

History: En. Sec. 27, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-227.

32-5-406. Penalties. (1) Any person who shall contract for or receive interest or charges on any bond, bill, promissory note, or other instrument of writing at a rate exceeding the maximum amount authorized by this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person who, by any device, subterfuge, or pretense whatsoever, shall engage in any transaction permitted only to licensees under the provisions of the chapter without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 28, Ch. 283, L. 1959; R.C.M. 1947, 47-228.

CHAPTER 6

ELECTRONIC FUNDS TRANSFER ACT

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Part 1

General Provisions

32-6-101. Short title. This chapter shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

History: En. 5-1701 by Sec. 1, Ch. 503, L. 1977; R.C.M. 1947, 5-1701.

32-6-102. Findings and purpose. (1) The legislature has determined that development of electronic funds transfer systems is a technology which promises convenience and efficiency for all types of financial depository institutions and their customers. The legislature further finds that this technology threatens to proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to control orderly development of this technology to prevent market domination and monopolies, to provide parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved in the use of this technology. This chapter shall apply to financial institutions chartered under the United States Code, to the extent permitted by such code.

(2) The legislature finds need to control location and structural placement of electronic terminals in order to:

(a) assure access, protection, and convenience to the public using them;

(b) assure that structural placement of automated teller machines is designed to provide maximum protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using them;

(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;

(d) prevent vehicle backup onto public highways;

(e) prevent undue interference with nearby businesses;

(f) locate automated teller machines in places permitting maximum sharing of their use to all operators desiring to use them under conditions herein stated.

(3) The legislature further finds that in the present state of the technology there is substantial potential for error and misuse and that these systems, including various types of terminals, telecommunications between them and computer and switching equipment or transport of electronically recorded materials from the terminals to such equipment, and the computers and switches themselves are subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious need for the exercise of the police power of this state to protect its citizens and their property in the use of this technology. Location of terminals is an important factor in such protection.

(4) The legislature further finds that commercial banks, savings and loan associations, and credit unions, chartered by both federal and state governments, are in competition for deposits, share accounts, and loans and other financial business of the state's citizens; that each has the capability of utilizing electronic funds transfer systems; and that unless there is controlled use of these systems there will be strong potentials for destructive competition and market domination by some financial institutions over others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.

(5) To meet these needs, the legislature finds that state authority must provide for authorizing such systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for penalties for violation of this chapter.

History: En. 5-1702 by Sec. 2, Ch. 503, L. 1977; R.C.M. 1947, 5-1702.

32-6-103. Definitions. As used in this chapter, the following definitions shall apply unless the context otherwise requires:

(1) "Electronic funds transfer" means debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention.

(2) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 shall be considered a financial institution.

(3) (a) "Satellite terminal" means any machine or device located off the premises of a financial institution which a financial institution or its customers may use to carry out electronic funds transfers.

(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, activated by a unique identification device and personal identification number;

(ii) point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of "satellite terminal" does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution.

(4) "Premises" means those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; the term includes a detached drive-in or walk-up facility approved under 32-1-372.

(5) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.

(6) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(7) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(8) "Department" means the department of business regulation.

(9) "Person" means an individual, partnership, corporation, association, or any other business organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer with relation to a financial institution.

History: En. 5-1703 by Sec. 3, Ch. 503, L. 1977; R.C.M. 1947, 5-1703.

32-6-104. Consumer information. (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(a) the specific transactions which may be performed through satellite terminals;

(b) the charges, if any, for individual transactions engaged in through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of such theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of any errors he believes have been made in his account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, shall be provided the customer. In addition, the information set forth in subsection (1)(d) of this section shall be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

History: En. 5-1706 by Sec. 6, Ch. 503, L. 1977; R.C.M. 1947, 5-1706.

32-6-105. Protection of privacy. (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without consent of the customer or, if the customer refuses to so consent, under subpoena issued by a court of record.

(2) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

History: En. 5-1709 by Sec. 9, Ch. 503, L. 1977; R.C.M. 1947, 5-1709.

32-6-106. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if he has lawful access to such records by virtue of office or employment:

(a) and permits another, who lacks lawful access to such records, to inspect, copy, or read such records; or

(b) transfers such records to another who lacks lawful access thereto.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than $5,000, or be punished by both such imprisonment and fine.

History: En. 5-1710 by Sec. 10, Ch. 503, L. 1977; R.C.M. 1947, 5-1710.

Part 2

Satellite Terminals

32-6-201. Satellite terminals — permitted uses. Satellite terminals may be employed in the state only in the following capacities:

(1) as an automated teller machine to make electronic funds transfers as defined in this chapter, off the premises of a financial institution, operated by the customers of financial institutions without assistance;

(2) as a point-of-sale terminal, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services.

History: En. 5-1704 by Sec. 4, Ch. 503, L. 1977; R.C.M. 1947, 5-1704.

32-6-202. Authorization for certain satellite terminals required. (1) Subject to the limitation expressed in 32-6-204 and to the other requirements of this chapter, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located within or not more than 3 miles beyond the incorporated municipality where each participating institution maintains its office or, if the financial institution is located outside an incorporated municipality, then not more than 3 miles from its principal place of business, after first obtaining authorization from the department pursuant to rules adopted by the department. Business organizations other than financial institutions may own satellite terminals, provided, however, that such organizations shall not engage in the business of a financial institution and that ownership and possession of such satellite terminals shall be regulated by the department and they shall not be used for any purpose other than is authorized in this chapter.

(2) A merchant may install and operate a point-of-sale terminal. A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this chapter.

History: En. 5-1705 by Sec. 5, Ch. 503, L. 1977; R.C.M. 1947, 5-1705.

32-6-203. Institutional access requirements. (1) A satellite terminal used by a financial institution must be made available, on a nondiscriminatory basis, to all financial institutions or branches thereof located within the geographic area that may use each type of satellite terminal, as defined and outlined in 32-6-204, and that may want to participate in using this satellite terminal. In addition, each customer authorized by any financial institution may use the satellite terminal, with the limitations on the transactions imposed and outlined in 32-6-204. The charges required to be paid by any financial institution which utilizes the satellite terminal may not exceed a pro rata portion of the cost, determined in accordance with generally accepted accounting principles, and a reasonable return on the owner's equity. The costs for the use of an automated teller machine chargeable to a financial institution for a financial transaction may not exceed 125% of the average transaction cost for the use of automated teller machines in Montana. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code, and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable.

(2) A financial institution may invest in, acquire, or hold shares in a corporation engaged solely in operating and owning satellite terminals. A financial institution may utilize, establish, or own, either alone or with one or more financial institutions, satellite terminals and related communication equipment associated with electronic funds transfers. Other business organizations may also own satellite terminals and lease or otherwise permit financial institutions to use the satellite terminals, provided these other businesses comply with the provisions of this chapter

and agree to come under the supervision of the department. Such other business organizations may not engage in the business of a financial institution.

History: En. 5-1707 by Sec. 7, Ch. 503, L. 1977; R.C.M. 1947, 5-1707.

32-6-204. Geographical restrictions on certain satellite terminals. (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within or not more than 3 miles beyond the municipality where its office is located or, if the financial institution is located outside any incorporated municipality, not more than 3 miles from its principal place of business.

(2) The department may authorize the operation of an automatic teller machine which a financial institution uses only if such institution complies with this chapter and regulations adopted by the department.

(3) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may debit his account in an out-of-state financial institution at an in-state satellite terminal to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state.

(4) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services.

History: En. 5-1708 by Sec. 8, Ch. 503, L. 1977; R.C.M. 1947, 5-1708.

Part 3

Operation

32-6-301. Records of electronic funds transfers. (1) A satellite terminal shall be operated so as to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer shall be admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction which it records.

(3) (a) A financial institution shall provide each of its customers utilizing electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1) of this section.

(b) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers shall be identified as such and be furnished in compliance with this subsection.

History: En. 5-1711 by Sec. 11, Ch. 503, L. 1977; R.C.M. 1947, 5-1711.

32-6-302. Verification of statement — procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer shall identify himself and the foundation of his belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction (if the correction is not in the exact amount of the alleged error, the description shall explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, shall be furnished the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in such account affecting the portion not in dispute until it complies with subsection (2). A financial institution which has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

History: En. 5-1712 by Sec. 12, Ch. 503, L. 1977; R.C.M. 1947, 5-1712.

32-6-303. Unauthorized transactions — liability. (1) A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the amount shall be recredited to his account as provided under 32-6-302, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of such loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of such theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by such other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4) of this section.

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer which does not fall upon a customer or a merchant under this section falls upon the financial institution which carries out the transfer.

History: En. 5-1713 by Sec. 13, Ch. 503, L. 1977; R.C.M. 1947, 5-1713.

32-6-304. Automatic teller machines — additional standards. Before the department authorizes an automatic teller machine, the owner must certify to the department that the machine complies with the provisions of this chapter and is:

(1) equipped with adequate security provisions;
(2) activated by a unique identification device;
(3) designed so as to produce the transaction record required by 32-6-301(1).

History: En. 5-1714 by Sec. 14, Ch. 503, L. 1977; R.C.M. 1947, 5-1714.

32-6-305. Point-of-sale terminals — additional standards. (1) Before the department approves a point-of-sale terminal, it must find that the merchant demonstrates on his application that:

(a) he will use acceptable procedures for customer self-identification;

(b) he will use a draft and receipt system, on which the customer's signature acknowledges receipt of the goods or services paid for by electronic funds transfer;

(c) he will institute a procedure whereby he keeps one copy of each such draft and receipt for 1 year following the date of transaction, he gives one copy to the customer in satisfaction of 32-6-301(1), and he forwards one copy to the customer's financial institution. The requirement of a copy to the financial institution may be waived by the department by rule if the point-of-sale terminal is activated by a customer's unique identification device.

(2) A financial institution involved in an electronic funds transfer initiated from a point-of-sale terminal may inspect the merchant's copy of the transaction record for any purpose consistent with the privacy provisions of 32-6-105.

History: En. 5-1715 by Sec. 15, Ch. 503, L. 1977; R.C.M. 1947, 5-1715.

32-6-306. Personal identification number — restrictions. (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

History: En. 5-1716 by Sec. 16, Ch. 503, L. 1977; R.C.M. 1947, 5-1716.

32-6-307. Advertising — restrictions. Advertising on satellite terminals shall be restricted to a common symbol or to identification of each participating financial institution in characters of equal size and prominence. This section does not restrict the right of financial institutions to advertise electronic funds transfer services in other media.

History: En. 5-1717 by Sec. 17, Ch. 503, L. 1977; R.C.M. 1947, 5-1717.

32-6-308. Standard format code. All satellite terminals in the state shall be operated by a standard format code compatible with that used in other states. If cards are used as unique identification devices, the department may, by rule, prescribe a standard size.

History: En. 5-1718 by Sec. 18, Ch. 503, L. 1977; R.C.M. 1947, 5-1718.

32-6-309. Conventional checking option preserved. A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service.

History: **En. 5-1719 by Sec. 19, Ch. 503, L. 1977; R.C.M. 1947, 5-1719.**

Part 4

Regulation and Enforcement

32-6-401. Rulemaking authority delegated. The department may adopt, amend, or repeal rules reasonably necessary to implement this chapter and effectuate its purposes.

History: **En. 5-1720 by Sec. 20, Ch. 503, L. 1977; R.C.M. 1947, 5-1720.**

32-6-402. Enforcement. (1) Upon petition of the department and opportunity for a hearing under the Montana Administrative Procedure Act, the department may revoke or suspend authorization to operate a satellite terminal or to participate in its operation on the grounds that the person holding such authority has violated a provision of this chapter or a rule validly adopted.

(2) The department may bring an action in district court to enjoin a person from operating or participating in the operation of a satellite terminal without authority.

History: **En. 5-1721 by Sec. 21, Ch. 503, L. 1977; R.C.M. 1947, 5-1721.**

TITLE 33

INSURANCE AND INSURANCE COMPANIES

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4. Farm Mutual Insurers.
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CHAPTER 1

ADMINISTRATION AND GENERAL PROVISIONS

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Part 1

General Provisions

33-1-101. Short title. This [act] constitutes the "Montana Insurance Code".

History: En. Sec. 1, Ch. 286, L. 1959; R.C.M. 1947, 40-2601.

33-1-102. Compliance required — exceptions — health service corporations. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code shall not apply to health service corporations to the extent that the existence and operations of such corporations are authorized by Title 35, chapter 2, and related sections of the Montana Codes Annotated.

History: En. Sec. 9, Ch. 286, L. 1959; Sec. 40-2609, R.C.M. 1947; (2)En. Sec. 10, Ch. 286, L. 1959; Sec. 40-2610, R.C.M. 1947; (3)En. Sec. 11, Ch. 286, L. 1959; Sec. 40-2611, R.C.M. 1947; R.C.M. 1947, 40-2609, 40-2610, 40-2611.

33-1-103. Particular provisions prevail. Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

History: En. Sec. 16, Ch. 286, L. 1959; R.C.M. 1947, 40-2616.

33-1-104. General penalty. Each violation of any provision of this code with respect to which violation a greater penalty is not provided by other applicable laws of this state shall, in addition to any administrative penalty otherwise applicable thereto, upon conviction in a court of competent jurisdiction of this state be punishable by a fine of not less than $50 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: En. Sec. 17, Ch. 286, L. 1959; R.C.M. 1947, 40-2617.

Part 2

Definitions

33-1-201. Definitions — insurance in general. (1) An "alien insurer" is one formed under the laws of any country other than the United States of America, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one formed under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(7) "State", when used as to jurisdiction, means a state, the District of Columbia, a territory, commonwealth, or possession of the United States of America.

(8) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(9) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

History: (1), (3), (4), (7)En. Sec. 6, Ch. 286, L. 1959; Sec. 40-2606, R.C.M. 1947; (2), (9)En. Sec. 7, Ch. 286, L. 1959; Sec. 40-2607, R.C.M. 1947; (5)En. Sec. 2, Ch. 286, L. 1959; Sec. 40-2602, R.C.M. 1947; (6)En. Sec. 3, Ch. 286, L. 1959; Sec. 40-2603, R.C.M. 1947; (8)En. Sec. 8, Ch. 286, L. 1959; Sec. 40-2608, R.C.M. 1947; R.C.M. 1947, 40-2602, 40-2603, 40-2606, 40-2607, 40-2608.

33-1-202. Definitions — entities. (1) "Commissioner" means commissioner of insurance of the state of Montana unless the context requires otherwise.

(2) "Department" means the department of insurance of the state of Montana unless the context requires otherwise.

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity.

History: (1), (2)En. Sec. 5, Ch. 286, L. 1959; Sec. 40-2605, R.C.M. 1947; (3)En. Sec. 4, Ch. 286, L. 1959; Sec. 40-2604, R.C.M. 1947; R.C.M. 1947, 40-2604, 40-2605.

33-1-203 and 33-1-204 reserved.

33-1-205. Definitions of kinds of insurance not mutually exclusive. It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in this part, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage may likewise be reasonably included.

History: En. Sec. 72, Ch. 286, L. 1959; R.C.M. 1947, 40-2901.

33-1-206. Casualty insurance. (1) Casualty insurance includes:

(a) vehicle insurance which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(b) liability insurance which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) burglary and theft which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of such liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock which is insurance against loss or damage to livestock and for services of a veterinary for such animals;

(m) entertainments which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) miscellaneous which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as

stated under subsections (a) (vehicle), (b) (liability), (d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be considered to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this code applicable to life or disability insurances.

History: En. Sec. 76, Ch. 286, L. 1959; amd. Sec. 49, Ch. 359, L. 1977; R.C.M. 1947, 40-2905.

33-1-207. Disability insurance. Disability insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the expense thereof or against disablement or expense resulting from sickness and every insurance appertaining thereto. Transaction of disability insurance does not include workers' compensation insurance.

History: En. Sec. 74, Ch. 286, L. 1959; R.C.M. 1947, 40-2903.

33-1-208. Life insurance. Life insurance is insurance on human lives. The transaction of life insurance includes also the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Transaction of life insurance does not include workers' compensation insurance.

History: En. Sec. 73, Ch. 286, L. 1959; R.C.M. 1947, 40-2902.

33-1-209. Marine, marine protection and indemnity, and wet marine and transportation insurance. (1) Marine insurance includes:

(a) insurance against any and all kinds of loss or damage to:

(i) vessels, craft, aircraft, cars, automobiles, and vehicles of every kind as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment, incident thereto, including marine builder's risks and all personal property floater risks;

(ii) person or to property in connection with or appertaining to a marine, inland marine, transit, or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of such insurance but not including life insurance, surety bonds, or insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance, or use of automobiles;

(iii) precious stones, jewels, jewelry, gold, silver, and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise; and

(iv) bridges, tunnels, and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents, and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and/or civil commotion are the only hazards to be covered; piers, wharves, docks, and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks;

(b) marine protection and indemnity insurance, meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the property of another person.

(2) For the purposes of this code wet marine and transportation insurance is that part of marine insurance which includes only:

(a) insurance upon vessels, crafts, and hulls and of interests therein or with relation thereto;

(b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(c) insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and

(d) insurance of personal property and interests therein, in course of exportation from or importation into any country and in course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation while being prepared for and while awaiting shipment and during any delays, storage, transshipment, or reshipment incident thereto.

History: En. Sec. 78, Ch. 286, L. 1959; R.C.M. 1947, 40-2907.

33-1-210. Property insurance. Property insurance is insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.

History: En. Sec. 75, Ch. 286, L. 1959; R.C.M. 1947, 40-2904.

33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, vandalism, or criminal mischief or any attempt thereat.

History: En. Sec. 77, Ch. 286, L. 1959; amd. Sec. 50, Ch. 359, L. 1977; R.C.M. 1947, 40-2906.

33-1-212. Title insurance. Title insurance is insurance of owners of property or others having an interest therein or liens or encumbrances thereon against loss by encumbrance, defective titles, invalidity, or adverse claim to title.

History: En. Sec. 79, Ch. 286, L. 1959; R.C.M. 1947, 40-2908.

Part 3

Commissioner and Department General Powers and Duties

33-1-301. Insurance department — control — appropriations. (1) The insurance department shall be under the control and supervision of the commissioner.

(2) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702(2), (3).

33-1-302. Commissioner's seal. (1) The commissioner shall have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the state of Montana, encircled by the words "Commissioner of Insurance, State of Montana".

(2) All certificates and licenses issued by the commissioner shall bear his seal, except that the commissioner may, in his discretion, omit the seal as to licenses.

History: En. Sec. 22, Ch. 286, L. 1959; R.C.M. 1947, 40-2703.

33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who shall be in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for such purposes as he may designate.

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to him.

(4) The commissioner may appoint or employ such examiners to conduct or assist in examinations of insurers and others provided for under the code as may be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) The commissioner shall appoint and employ a field investigator whose primary duty it shall be, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

(6) The commissioner may appoint a chief clerk for the insurance department and employ such other assistants and clerks as may be necessary to assist him properly to discharge the duties imposed upon him under this code.

(7) The commissioner may at any time terminate the appointment, designation, or employment of any such deputy, actuary, chief clerk, or other employee.

(8) The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, such actuarial, technical, or other professional services as he may require for the discharge of his duties.

(9) The compensation of all such personnel so appointed, employed, or contracted for by him shall be as fixed by the commissioner but in the aggregate shall not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose.

History: En. Sec. 23, Ch. 286, L. 1959; R.C.M. 1947, 40-2704.

33-1-304. Delegation of authority — responsibility. (1) The commissioner may delegate to any deputy, assistant, examiner, or employee of his department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

(2) The commissioner shall be responsible for the official acts of his deputy, assistant, examiner, or employee acting in the commissioner's name and by his authority.

History: En. Sec. 25, Ch. 286, L. 1959; R.C.M. 1947, 40-2706.

33-1-305. Conflicts of interest and certain compensation prohibited. (1) The commissioner or any deputy, examiner, assistant, or employee of the commissioner shall not be financially interested, directly or indirectly, in any insurer, insurance agency, or insurance transaction except as a policyholder or claimant under a policy.

(2) The commissioner or any deputy, examiner, or employee of the commissioner shall not be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service rendered or to be rendered as such commissioner, deputy, examiner, or employee or in connection therewith.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

33-1-306. Dual contracts permitted. As to such matters wherein a conflict of interest does not exist on the part of any such individual, the commissioner may employ or retain from time to time insurance actuaries, attorneys, or other technicians who are independently practicing their professions even though similarly employed or retained by insurers or others.

History: En. Sec. 24, Ch. 286, L. 1959; R.C.M. 1947, 40-2705(part).

33-1-307 through 33-1-310 reserved.

33-1-311. General powers and duties. (1) The commissioner shall enforce the provisions of this code and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.

(4) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(1) thru (3), (5).

33-1-312. Records and certificates. (1) The commissioner shall enter in permanent form records of his official transactions, examinations, investigations, and proceedings and keep such records in his office. Such records and insurance filings in his office shall be open to public inspection except as otherwise provided in this code with respect to particular records or filings.

(2) When required, the commissioner shall furnish his certificate as to the authority of any person to transact insurance, and such certificate shall be evidence of the facts set forth therein.

(3) Copies of records or documents in his office certified to by the commissioner shall be received in evidence in all courts as if they were the originals.

History: (1)En. Sec. 26, Ch. 286, L. 1959; Sec. 40-2707, R.C.M. 1947; (2), (3)En. Sec. 27, Ch. 286, L. 1959; Sec. 40-2708, R.C.M. 1947; R.C.M. 1947, 40-2707, 40-2708.

33-1-313. Rules — notice, hearing, and penalty. (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.

History: En. Sec. 29, Ch. 286, L. 1959; R.C.M. 1947, 40-2710.

33-1-314. Orders and notices. (1) Orders and notices of the commissioner shall not be effective unless in writing signed by him or by his authority.

(2) Every such order shall state its effective date and shall concisely state:

(a) its intent or purpose;

(b) the grounds on which based;

(c) the provisions of this code pursuant to which action is so taken or proposed to be taken, but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

(3) Except as may be provided in this code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to him at his principal place of business as last of record in the commissioner's office. Such order or notice shall be deemed to have been given when so mailed.

History: En. Sec. 30, Ch. 286, L. 1959; R.C.M. 1947, 40-2711.

33-1-315. Witnesses — production of records — subpoena — failure to respond — perjury. (1) With respect to the subject of any examination, investigation, or hearing being conducted by him, the commissioner or his examiner, if general written authority therefor has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner is authorized to conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if such person is found to have

been in violation of the law as to the matter with respect to which such witness was subpoenaed or by the person, if other than the commissioner, at whose request the hearing is held.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall forthwith report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall forthwith cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person willfully failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who willfully fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or willfully fails to appear and testify under oath before the commissioner shall upon conviction thereof, in addition to or in lieu of any other penalty or penalties applicable, be deemed guilty of a misdemeanor.

(5) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and punished accordingly.

History: En. Sec. 37, Ch. 286, L. 1959; R.C.M. 1947, 40-2718.

33-1-316. Testimony compelled — immunity from prosecution. No person shall be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person shall be prosecuted or punished in any criminal action or proceeding for or on account of any act, transaction, matter, or thing concerning which he is so compelled to produce evidence or to testify under oath, except for perjury committed in such testimony.

History: En. Sec. 38. Ch. 286, L. 1959; R.C.M. 1947, 40-2719.

33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of $5,000 upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed $500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709(4).

Part 4

Examinations by Department

33-1-401. Examination of insurers. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as he deems advisable. He shall so examine each domestic insurer not less frequently than every 3 years. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact insofar as the transactions of the attorney-in-fact relate to the insurer.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States.

History: En. Sec. 32, Ch. 286, L. 1959; R.C.M. 1947, 40-2713.

33-1-402. Examination of agents, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any insurance agent, solicitor, surplus line agent, general agent, or adjuster;

(2) any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) any person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof, as voting trustee or otherwise;

(4) any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business.

History: En. Sec. 33, Ch. 286, L. 1959; R.C.M. 1947, 40-2714.

33-1-403. Conduct of examination — records — correction of accounts — appraisals. (1) The commissioner shall conduct any such examination at the home office, if a domestic or foreign insurer, or United States branch office, if an alien insurer, of the insurer or in any of its branch or agency offices. With respect to persons other than insurers, the commissioner shall conduct any such examination at the office or other place of business of such person or at any place or places where his records are kept.

(2) Every person being examined, its officers, employees, agents, and representatives shall produce and make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in his possession or control relating to the subject of the examination and shall otherwise facilitate and aid such examination as far as reasonably possible.

(3) If the commissioner finds accounts to be inadequate or inadequately kept or posted, he may employ experts to rewrite, post, or balance them at the expense of the person being examined if such person has failed to complete or correct such accounting after the commissioner has given him notice and a reasonable opportunity to do so.

(4) If the commissioner deems it necessary to value any real estate involved in any such examination, he may make written request of the person being examined to appoint one or more competent appraisers approved by the commissioner for the purpose of appraising such property. If no such appointment is made within 10 days after such request was delivered to such person, the commissioner may appoint the appraiser or appraisers. Any such appraisal shall be made promptly and a copy of the report thereof shall be furnished to the commissioner. The reasonable expense of the appraisal shall be borne by the person being examined.

History: En. Sec. 34, Ch. 286, L. 1959; R.C.M. 1947, 40-2715.

33-1-404 through 33-1-410 reserved.

33-1-411. Destruction of records — hindrance of examination — penalty. Any director, officer, agent, or employee of any company who destroys any books, records, or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than $1,000, and after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(3).

33-1-412. Examination reports — hearings — confidentiality — publication. (1) The commissioner or his examiner shall make a full and true report of each examination, verified by his oath.

(2) The report shall comprise only facts appearing from the books, papers, records, or documents of the person being examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by such facts.

(3) The commissioner shall furnish a copy of the proposed report to the person examined not less than 20 days prior to filing the same in his office. If such person so requests in writing within such 20-day period, the commissioner shall grant a hearing with respect to the report and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(4) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(5) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(6) If he deems such to be in the public interest, the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959; amd. Sec. 1, Ch. 28, L. 1967; R.C.M. 1947, 40-2716(1), (2), (4) thru (7).

33-1-413. Examination expense — lien. (1) Upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization, each person so examined, other than as to examinations pursuant to 33-1-402, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established or adopted by the commissioner. Such an account may be so presented periodically during the course of the examination or at the termination of the examination as the commissioner deems proper. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3) If any such person fails to pay the charges and expenses, as referred to in subsection (1) above, they shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall

be a first lien upon all of the assets and property in this state of such person and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

History: En. Sec. 36, Ch. 286, L. 1959; amd. Sec. 72, Ch. 147, L. 1963; R.C.M. 1947, 40-2717.

Part 5

Approval of Forms

33-1-501. Filing and approval of forms. (1) No basic insurance policy or annuity contract form, application form where written application is required and is to be made a part of the policy or contract, printed rider or endorsement form, or form of renewal certificate shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the commissioner. This provision shall not apply to surety bonds; specially rated inland marine risks; or policies, riders, endorsements, or form of unique character designed for and used with relation to insurance upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers, but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than 30 days in advance of any such delivery. At the expiration of such 30 days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional 30 days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before expiration of the initial 30-day period. At the expiration of any such period as so extended and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

(6) This section and 33-1-502 shall not apply as to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in this state or delivered in this state, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

History: (1) thru (5)En. Sec. 271, Ch. 286, L. 1959; Sec. 40-3714, R.C.M. 1947; (6)En. Sec. 258, Ch. 286, L. 1959; Sec. 40-3701, R.C.M. 1947; R.C.M. 1947, 40-3701(part), 40-3714.

33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval thereof only if the form:

(1) is in any respect in violation of or does not comply with this code;

(2) contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract;

(3) has any title, heading, or other indication of its provisions which is misleading;

(4) is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible.

History: En. Sec. 272, Ch. 286, L. 1959; R.C.M. 1947, 40-3715.

Part 6

Service of Process

33-1-601. Commissioner — attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner and his successors in office as its attorney to receive service of legal process issued against it in Montana. The appointment shall be made on a form as designated and furnished by the commissioner. The appointment shall be irrevocable, shall bind the insurer and any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in Montana any contract made by the insurer or obligations arising therefrom.

(2) Each insurer at time of application for a certificate of authority shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(1), (3).

33-1-602. Service of process — foreign, alien, or domestic. Service of such process against a foreign or alien insurer shall be made only by service of process upon the commissioner or upon a deputy or other person in charge of his office during his absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally or upon the insurer's attorney-in-fact if a domestic reciprocal insurer.

History: En. Sec. 63, Ch. 286, L. 1959; R.C.M. 1947, 40-2818(2).

33-1-603. Serving process — time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney, pursuant to 33-1-601, shall be served upon the commissioner or upon his deputy or other person in charge of his office during his absence. At the time of service, the plaintiff shall pay to the commissioner $10, taxable as costs in the action. Upon receiving such service, the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

(2) Where process is served upon the commissioner as an insurer's attorney, the insurer shall have 30 days within which to appear, answer, or plead after date of mailing of the copy thereof by the commissioner, exclusive of date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall constitute service thereof upon the insurer.

History: En. Sec. 64, Ch. 286, L. 1959; amd. Sec. 1, Ch. 321, L. 1977; R.C.M. 1947, 40-2819.

33-1-604 through 33-1-610 reserved.

33-1-611. Unauthorized Insurers Process Act — interpretation. (1) Sections 33-1-611 through 33-1-616 constitute and may be cited as the "Unauthorized Insurers Process Act".

(2) Such act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 178, Ch. 286, L. 1959; R.C.M. 1947, 40-3403.

33-1-612. Commissioner — process agent for unauthorized insurer doing business in state. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer, or the performance within this state of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by such insurer of the commissioner and his successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against such insurer arising out of any such contract or transaction, and shall be deemed to signify the insurer's agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this state.

History: En. Sec. 179, Ch. 286, L. 1959; R.C.M. 1947, 40-3404.

33-1-613. Service of process — criteria mandating designation of commissioner. (1) Service of process upon any such insurer pursuant to 33-1-612 shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner shall forthwith mail by registered or certified mail one of the copies of such process to the defendant at its principal place of business last known to the commissioner and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered or certified mail by plaintiff's attorney to the defendant at its last known principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(2) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in subsection (1) of this section be valid if:

(a) served upon any person within this state who in this state on behalf of such insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or

(iii) collecting or receiving any premium for insurance;

(b) a copy of such process is sent within 10 days thereafter by registered or certified mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) Nothing in this section contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

History: En. 40-3405 by Sec. 180, Ch. 286, L. 1975; R.C.M. 1947, 40-3405.

33-1-614. Exemptions from service of process provisions. Sections 33-1-611 through 33-1-613 shall not apply to:

(1) surplus line insurance lawfully effectuated under part 3, chapter 2;

(2) reinsurance; or

(3) any action or proceeding against an unauthorized insurer arising out of:

(a) wet marine and transportation insurance;

(b) insurance on or with respect to subjects located, resident, or to be performed wholly outside this state or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) insurance on property or operations of railroads engaged in interstate commerce; or

(d) insurance on aircraft or cargo of such aircraft or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy or where the insurer enters a general appearance in any such action.

History: En. Sec. 181, Ch. 286, L. 1959; R.C.M. 1947, 40-3406.

33-1-615. Defense of action by unauthorized insurer. (1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under 33-1-612 and 33-1-613, such insurer shall:

(a) procure a certificate of authority to transact insurance in this state; or

(b) deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located.

(2) The court in any action or proceeding in which service is made in the manner provided in 33-1-613 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) above and to defend such action.

(3) Nothing in subsection (1) above is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in 33-1-613 hereof, on the ground either:

(a) that such unauthorized insurer has not done any of the acts enumerated in 33-1-612; or

(b) that the person on whom service was made pursuant to 33-1-613(2) was not doing any of the acts therein enumerated.

History: En. Sec. 182, Ch. 286, L. 1959; R.C.M. 1947, 40-3407.

33-1-616. Attorney's fee. In any action against an unauthorized insurer under this Unauthorized Insurers Process Act, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the insurance contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. The fee shall not exceed one-third of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $100. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

History: En. Sec. 183, Ch. 286, L. 1959; R.C.M. 1947, 40-3408.

Part 7

Hearings and Appeals

33-1-701. Hearings — discretion — written demand. (1) The commissioner may hold hearings for any purpose within the scope of this code deemed by him to be necessary.

(2) The commissioner shall hold a hearing if required by any provision or upon written demand therefor by a person aggrieved by any act, threatened act, or failure of the commissioner to act or by any report, rule, or order of the commissioner, other than an order for the holding of a hearing or an order on hearing or pursuant thereto. Any such demand shall specify the grounds to be relied upon as a basis for the relief to be demanded at the hearing, and unless postponed by mutual consent, such hearing shall be held within 30 days after receipt by the commissioner of demand therefor.

(3) If within such 30-day period the commissioner does not either grant the hearing or issue his order refusing the hearing as to such previous report, rule, or order as to which such person so claims to be aggrieved, then the hearing shall thereby be deemed to have been refused.

History: En. Sec. 39, Ch. 286, L. 1959; R.C.M. 1947, 40-2720.

33-1-702. Stay of action. (1) Such a demand for a hearing received by the commissioner prior to the effective date of any order issued by him or within 10 days after such order is delivered shall stay the effectiveness of such order pending the hearing and an order made thereon, except as to action taken or proposed under:

(a) an order on hearing;
(b) an order pursuant and supplemental to an order on hearing; or
(c) an order based upon impairment of assets or unsound financial condition of an insurer.

(2) If an automatic stay is not provided for and the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the district court for Lewis and Clark County for a stay of the commissioner's proposed action.

History: En. Sec. 40, Ch. 286, L. 1959; R.C.M. 1947, 40-2721.

33-1-703. Notice of hearing. Not less than 10 days in advance, the commissioner shall give notice of the time and place of the hearing, stating the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

History: En. Sec. 41, Ch. 286, L. 1959; R.C.M. 1947, 40-2722.

33-1-704. Hearing procedure. (1) Hearings may be closed to the public at the commissioner's discretion, except that a hearing held with respect to a filing made under chapter 16 prior to the effective date of such filing shall be closed to the public unless otherwise requested by the party that made such filing. In all other cases, a hearing shall be open to the public if so requested in writing by any party to the hearing.

(2) The commissioner shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his interest, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf.

(3) The commissioner shall permit to become a party to the hearing by intervention, if timely, any person who was not an original party thereto and whose pecuniary interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

(4) Formal rules of pleading or evidence need not be observed at any hearing.

(5) Upon written request seasonably made by a party to the hearing and at such person's expense, the commissioner shall cause a full stenographic record of the proceedings to be made by a competent reporter. If transcribed, a copy of such stenographic record shall be furnished to the commissioner without cost to the commissioner or the state and shall be a part of the commissioner's record of the hearing. If so transcribed, a copy of such stenographic record shall be furnished to any other party to such hearing at the request and expense of such other party. If no stenographic record is made or transcribed, the commissioner shall prepare an adequate record of the evidence and of the proceedings.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(1) thru (5).

33-1-705. Rehearing. Upon written request of a party to a hearing filed with the commissioner within 30 days after any order made pursuant to a hearing has been mailed or delivered to the persons entitled to receive the same, the commissioner may, in his discretion, grant a rehearing or reargument of the matters involved in such hearing. Notice of such rehearing or reargument shall be given as provided in 33-1-703.

History: En. Sec. 42, Ch. 286, L. 1959; R.C.M. 1947, 40-2723(6).

33-1-706. Order on hearing. (1) In conducting any such hearing, the commissioner shall sit in a quasi-judicial capacity. Within 30 days after termination of the hearing or of any rehearing thereof or reargument thereon, he shall make his order on hearing covering matters involved in such hearing and in any rehearing or reargument thereof and shall give a copy of such order to the same persons given notice of the hearing.

(2) The order shall contain a concise statement of the facts as found by the commissioner, of his conclusions therefrom, and of the matters required by 33-1-314.

(3) The order may affirm, modify, or nullify action theretofore taken or may constitute the taking of new action within the scope of the notice of hearing.

History: En. Sec. 43, Ch. 286, L. 1959; R.C.M. 1947, 40-2724.

33-1-707 through 33-1-710 reserved.

33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner shall be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such hearing or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such order on hearing or such refusal of a hearing. The appeal shall be taken to the district court of Lewis and Clark County by filing written notice of appeal in such court and by filing a copy of such notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an agent, solicitor, or surplus line agent, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal therein, the court shall have full jurisdiction and shall determine whether such filing shall operate as a stay of the order or action appealed from, except that in the following instances the filing of the notice of appeal shall automatically stay the order appealed from pending the judgment of the district court on the appeal:

(a) appeal from suspension or revocation of the license of an agent, solicitor, or surplus line agent;

(b) appeal from suspension or revocation of the certificate of authority of an insurer.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced thereat. If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall within such 20-day period make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which such appeal is taken.

(4) Upon receipt of such transcripts and evidence, the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the transcript, exhibits, and documents therein filed by the commissioner, together with such additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner in whole or in part or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs shall be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any such judgment may be made only by order of the supreme court upon the giving of such security as that court deems proper.

(8) This section shall not apply to appeals as to matters covered by chapter 16.

History: En. Sec. 44, Ch. 286, L. 1959; R.C.M. 1947, 40-2725.

CHAPTER 2

REGULATION OF INSURANCE COMPANIES

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Part 1

Authorization of Insurers

33-2-101. Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall have or maintain in Montana any office, representative, or other facilities for the solicitation or servicing of any kind of insurance in any other state unless it is then authorized to transact the same kind of insurance in this state.

History: En. Sec. 46, Ch. 286, L. 1959; R.C.M. 1947, 40-2801.

33-2-102. Exceptions to certificate of authority requirement. A certificate of authority shall not be required of an insurer, not otherwise authorized in this state, as to the following transactions:

(1) transactions relative to its policies lawfully written in Montana or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in Montana;

(2) transactions relative thereto subsequent to issuance of a policy covering only subjects of insurance not resident, located, or expressly to be performed in Montana at time of issuance, and which coverage was lawfully solicited, written, and delivered outside Montana;

(3) transactions pursuant to surplus lines coverages lawfully written pursuant to part 3 of this chapter;

(4) reinsurance, except as to domestic reinsurers.

History: En. Sec. 47, Ch. 286, L. 1959; R.C.M. 1947, 40-2802.

33-2-103. Admission for investment only. A foreign insurer may transact business in this state without certificate of authority for the purpose and to the extent only of investing its funds in Montana real estate or in securities secured thereby by complying with the applicable laws of this state other than this code. Such an insurer shall not be subject to any other provision of this code.

History: En. Sec. 48, Ch. 286, L. 1959; R.C.M. 1947, 40-2803.

33-2-104. Representing or aiding unauthorized insurer prohibited. (1) No person shall in this state directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

(2) This section shall not apply to:

(a) acceptance of service of process by the commissioner under 33-1-613;

(b) surplus lines insurance and other transactions as to which certificate of authority is not required of an insurer as stated in 33-2-102.

(3) Any person violating this section shall upon conviction thereof be guilty of a felony.

History: En. Sec. 176, Ch. 286, L. 1959; R.C.M. 1947, 40-3401.

33-2-105. Suits by unauthorized insurers prohibited. As to transactions not permitted under 33-2-102, no unauthorized insurer shall institute or file or cause to be instituted or filed any suit, action, or proceeding in this state to enforce any right, claim, or demand arising out of any insurance transaction in this state until such insurer has obtained a certificate of authority to transact such insurance in this state.

History: En. Sec. 177, Ch. 286, L. 1959; R.C.M. 1947, 40-3402.

33-2-106. General eligibility of insurers. (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, all of the same general type as may hereafter be formed as a domestic insurer under this code.

(2) No foreign insurer shall be authorized to transact insurance in Montana which does not maintain reserves as required by part 5 of this chapter applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States, or which transacts business anywhere in the United States on the assessment plan, stipulated premium plan, or any similar plan.

(3) No foreign insurer which is directly or indirectly owned or controlled in whole or in substantial part by any government or governmental agency shall be authorized to transact insurance in Montana unless it was so owned and first so authorized prior to January 1, 1957. Membership or subscribership in a mutual or reciprocal insurer by virtue of being a policyholder thereof, ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

History: En. Sec. 49, Ch. 286, L. 1959; R.C.M. 1947, 40-2804.

33-2-107. Name — dissimilar. (1) No insurer shall be authorized to transact insurance in this state which has or uses a name so similar to that of another insurer already so authorized as likely to mislead the public.

(2) No life insurer shall be authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state

within the preceding 10 years if life insurance policies originally issued by such other insurer are still outstanding in this state.

(3) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

(4) In case of conflict of names between two insurers or a conflict otherwise prohibited under the foregoing subsections of this section, the commissioner may permit or require the more recently authorized insurer to use in Montana such supplementation or modification of its name or such business name as may reasonably be necessary to avoid such conflict.

History: En. Sec. 50, Ch. 286, L. 1959; R.C.M. 1947, 40-2805.

33-2-108. Combinations of insuring powers. (1) Except as provided in subsections (2), (3), and (4), an insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in 33-1-205 through 33-1-212.

(2) A life insurer may also grant annuities but shall not be authorized to transact any other kind of insurance other than disability, except that if the insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any life insurer which, immediately prior to January 1, 1961, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(3) A reciprocal insurer shall not transact life insurance.

(4) A title insurer shall be a stock insurer.

History: En. Sec. 51, Ch. 286, L. 1959; R.C.M. 1947, 40-2806.

33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as required under 33-2-110:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Property	400,000
Marine	400,000
Casualty	
All lines except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines (two or more: property, marine, casualty, or surety)	800,000

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 3, and domestic reciprocal insurers shall be governed by chapter 5.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

History: En. Sec. 52, Ch. 286, L. 1959; amd. Sec. 1, Ch. 319, L. 1977; R.C.M. 1947, 40-2807(part).

33-2-110. Special surplus required. In addition to the minimum paid-in capital stock (stock insurers) or minimum surplus (mutual and reciprocal insurers) required by 33-2-109, special surplus shall be possessed by insurers as follows:

(1) All stock insurers and foreign mutual and foreign reciprocal insurers which have actively transacted insurance in their state of domicile as an authorized insurer for less than 5 years or, if an alien insurer, have transacted insurance as an authorized insurer in at least one state of the United States for less than 5 years when first authorized to transact insurance in this state shall have a surplus or additional surplus equal to not less than 100% of the paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal) otherwise required under 33-2-109 for the kinds of insurance to be transacted.

(2) Insurers that have actively transacted insurance as authorized insurers in one or more states of the United States for more than 5 years shall possess, when first authorized in this state, surplus or additional surplus equal to not less than 50% of the paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) otherwise required under 33-2-109.

(3) Insurers authorized to transact multiple lines of insurance in this state shall at all times have and maintain surplus of not less than $100,000, in addition to the capital (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) required by 33-2-109. The amount of such surplus shall be included within the surplus required of newly authorized insurers pursuant to subsections (1) and (2) of this section.

History: En. Sec. 53, Ch. 286, L. 1959; R.C.M. 1947, 40-2808.

33-2-111. Deposit requirement. (1) An insurer shall not be authorized to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit shall be in the amount of $50,000;

(b) foreign insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part thereof by such insurer is being maintained in public custody therein in trust for the purpose, among other reasonable purposes of protection of policyholders and/or creditors, of the protection of all its policyholders or policyholders and creditors in Montana;

(c) alien insurers, in lieu of such deposit or part thereof in this state, the commissioner shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositaries or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations which assets shall be in amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) $300,000.

(2) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers shall be made as provided in 33-2-531.

(4) Deposits made in this state shall further be subject to the provisions of part 6 of this chapter.

History: En. Sec. 54, Ch. 286, L. 1959; R.C.M. 1947, 40-2809.

33-2-112. Management qualifications and affiliations. The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by him to be untrustworthy or not of good character or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, accounts, or reinsurance or by bad faith.

History: En. Sec. 55, Ch. 286, L. 1959; R.C.M. 1947, 40-2810.

33-2-113 and 33-2-114 reserved.

33-2-115. Application for certificate of authority. To apply for an original certificate of authority, an insurer shall file with the commissioner its application therefor accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments thereto, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody thereof;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of December 31 next preceding, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) appointment of the commissioner pursuant to 33-1-601, as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that such rates as applicable will be those promulgated by designated rating organizations authorized to file such rates in this state on behalf of the insurer.

History: En. Sec. 56, Ch. 286, L. 1959; R.C.M. 1947, 40-2811.

33-2-116. Issuance or refusal of certificate of authority — state ownership of certificate. (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled thereto under this code, he shall issue to the insurer a proper certificate of authority. If he does not so find, the commissioner shall issue his order refusing such certificate. The commissioner shall act upon an application for a certificate of authority within 30 days after its completion.

(2) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the commissioner.

History: En. Sec. 57, Ch. 286, L. 1959; R.C.M. 1947, 40-2812.

33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority. (1) Certificates of authority issued or renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated; subject, however, to continuance of the certificate by the insurer each year by payment prior to May 15 of the continuation fee provided in 33-2-708.

(2) If not so continued by the insurer, its certificate of authority shall expire as at midnight on May 31 next following such failure of the insurer so to continue it in force. The commissioner shall promptly notify the insurer of the occurrence of any such failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in such expiration and upon payment by the insurer of the fee for reinstatement in addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers.

History: En. Sec. 58, Ch. 286, L. 1959; R.C.M. 1947, 40-2813.

33-2-118. Mandatory revocation or suspension of certificate of authority. (1) The commissioner shall suspend or revoke an insurer's certificate of authority if:

(a) such action is required by any provision of this code;

(b) the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) Except in cases of insolvency or impairment of required capital or surplus or suspension or revocation by another state as referred to in subsection (1)(c) above, the commissioner shall give the insurer at least 15 days' notice in advance of any such suspension or revocation under this section.

History: En. Sec. 59, Ch. 286, L. 1959; R.C.M. 1947, 40-2814.

33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus line insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

History: En. Sec. 60, Ch. 286, L. 1959; R.C.M. 1947, 40-2815.

33-2-120. Notice of suspension or revocation — effect upon agent's authority. (1) Upon suspending or revoking an insurer's certificate of authority, the commissioner shall forthwith give notice thereof to the insurer and to its agents in this state of record in the commissioner's office.

(2) Such suspension or revocation shall likewise automatically suspend or revoke, as the case may be, the authority of all such agents to act as agents of the insurer in this state, and the commissioner shall so state in the notice to agents provided for in subsection (1).

(3) In his discretion the commissioner may also publish notice of such revocation in one or more newspapers of general circulation published in this state.

History: En. Sec. 61, Ch. 286, L. 1959; R.C.M. 1947, 40-2816.

33-2-121. Duration of suspension — insurer's obligations — reinstatement. (1) Suspension of an insurer's certificate of authority shall be for such period as is fixed by the commissioner in the order of suspension but not to exceed 1 year. During the suspension the commissioner may shorten the period thereof by his further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate of authority has not been terminated, the insurer's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension have not been removed or that the insurer is otherwise not in compliance with the requirements of this code, and of which the commissioner shall give the insurer notice not less than 30 days in advance of the expiration of such period. If not so automatically reinstated, the certificate of authority shall be deemed to have expired as at the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period, whichever event shall first occur.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate.

(5) The commissioner shall forthwith notify both the insurer and its agents in this state, as shown by his records, of such reinstatement.

History: En. Sec. 62, Ch. 286, L. 1959; R.C.M. 1947, 40-2817.

Part 2

State of Entry — Trusteed Assets of Alien Insurers

33-2-201. Scope of part. This part applies to all alien insurers using Montana as a state of entry to transact insurance in the United States.

History: En. Sec. 599, Ch. 286, L. 1959; R.C.M. 1947, 40-5201.

33-2-202. Required deposit of assets. (1) An alien insurer may use Montana as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, shall be in amount not less than the deposits required of an alien insurer under 33-2-111(1) and shall consist of cash and/or securities of the same character and diversification as those eligible for the investment of the funds of domestic insurers under part 8 of this chapter.

(3) Such a deposit may be referred to as "trusteed assets".

History: En. Sec. 600, Ch. 286, L. 1959; R.C.M. 1947, 40-5202.

33-2-203. Existing trusts. All trusts of trusteed assets created before January 1, 1961, and existing on that date shall be continued under the instruments creating them unless inconsistent with the provisions of this part.

History: En. Sec. 601, Ch. 286, L. 1959; R.C.M. 1947, 40-5203.

33-2-204. Purpose and duration. The deposit required by 33-2-202 shall be for the benefit, security, and protection of the policyholders or policyholders and creditors of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

History: En. Sec. 602, Ch. 286, L. 1959; R.C.M. 1947, 40-5204.

33-2-205. Trust agreement — approval. (1) The deposit referred to in 33-2-202 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this part, and shall be authenticated in such form and manner as the commissioner may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement found by him not to be in compliance with law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or policyholders and creditors in the United States.

History: En. Sec. 603, Ch. 286, L. 1959; R.C.M. 1947, 40-5205.

33-2-206. Authority to execute trust agreement. An alien insurer using or proposing to use Montana as a state of entry to transact insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this part.

History: En. Sec. 604, Ch. 286, L. 1959; R.C.M. 1947, 40-5206.

33-2-207. Amendment of trust agreement. A trust agreement may be amended, but the amendment shall not be effective until filed with and approved in writing by the commissioner as being in compliance with this part.

History: En. Sec. 605, Ch. 286, L. 1959; R.C.M. 1947, 40-5207.

33-2-208. Withdrawal of approval. The commissioner's approval of any trust agreement or of any amendment thereof may be withdrawn by the commissioner if he finds upon hearing, after notice thereof to the insurer and the trustee or trustees, that the requisites for such approval, as provided in this part, no longer exist.

History: En. Sec. 606, Ch. 286, L. 1959; R.C.M. 1947, 40-5208.

33-2-209. Title to trusteed assets. Title to the trusteed assets is vested in the trustee or trustees and their successors for the purposes of the trust deposit, and the trust agreement shall so provide.

History: En. Sec. 607, Ch. 286, L. 1959; R.C.M. 1947, 40-5209.

33-2-210. Assets kept separate. The trustee shall keep the trusteed assets separate from other assets and shall maintain a record thereof sufficient to identify trusteed assets at all times.

History: En. Sec. 608, Ch. 286, L. 1959; R.C.M. 1947, 40-5210.

33-2-211. Statement of trustee. (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in such form as he may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee fails to file any such statement after request therefor and expiration of a reasonable time thereafter, the commissioner may suspend or revoke the certificate of authority of the insurer.

History: En. Sec. 609, Ch. 286, L. 1959; R.C.M. 1947, 40-5211.

33-2-212. Examination of assets. The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures as govern the examination of insurers in general under chapter 1 of this title.

History: En. Sec. 610, Ch. 286, L. 1959; R.C.M. 1947, 40-5212.

33-2-213. Withdrawal of assets. (1) The trust agreement shall provide, in substance, that no withdrawals of trusteed assets shall be made by the insurer or permitted by the trustee without the written authorization or approval of the commissioner in advance thereof, except as follows:

(a) any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) for substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under part 8 of this chapter, if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body and a copy of such authority has been filed with the trustee;

(c) for the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under 33-2-111(1)(c)(i) and (ii). The trustee shall transfer any assets so withdrawn and in the amount so required to be deposited in the other state direct to the depositary required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) for the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The commissioner shall so authorize or approve withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under 33-2-202 or as may otherwise be consistent with the provisions of this part.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less in amount than as required under 33-2-111(1)(c), upon determination thereof the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as authorized under (a), (b), and (c) of subsection (1) above, and the trustee shall comply with such order and until the further order of the commissioner.

History: **En. Sec. 611, Ch. 286, L. 1959; R.C.M. 1947, 40-5213.**

33-2-214. Substitution of trustee. (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trusteed assets in the event of a vacancy or for other proper cause. Any such substitution shall be subject to the commissioner's approval.

(2) If the trustees of any trusteed assets heretofore created are individuals and if the number of such trustees is reduced to less than three by death, resignation, or otherwise, the commissioner shall require that there be substituted for such trustees a bank or trust company in this state approved by him.

History: **En. Sec. 612, Ch. 286, L. 1959; R.C.M. 1947, 40-5214.**

33-2-215. Canadian insurers. The provisions of this part applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of such a Canadian insurer.

History: **En. Sec. 613, Ch. 286, L. 1959; R.C.M. 1947, 40-5215.**

Part 3

Authorization of Surplus Line Insurers, Agents, and Insurance

33-2-301. Short title. This part constitutes and may be referred to as "The Surplus Line Insurance Law".

History: En. Sec. 184, Ch. 286, L. 1959; R.C.M. 1947, 40-3409.

33-2-302. Conditions precedent to sale of surplus line insurance — agent's affidavit. (1) If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:

(a) The insurance must be procured through a licensed surplus line agent.

(b) The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from among a majority of the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance placed in an unauthorized insurer shall be only the excess over the amount procurable from authorized insurers.

(c) The insurance must not be so procured for the purpose of securing advantages either as to:

(i) a lower premium rate than would be accepted by an authorized insurer; or

(ii) terms of the insurance contract.

(2) At the time of procuring, effecting, and issuing any such insurance, the surplus line agent shall execute an affidavit, in form as prescribed or accepted by the commissioner, setting forth facts referred to in subsection (1) and file such affidavit with the commissioner. Affidavits filed under this subsection shall be subject to public inspection unless the commissioner determines that the public interest requires otherwise.

History: En. Secs. 185, 186, Ch. 286, L. 1959; R.C.M. 1947, 40-3410, 40-3411.

33-2-303. Endorsement of contract. Every insurance contract, cover, note, or certificate of insurance procured and delivered as a surplus line coverage under this law shall be endorsed as having been "issued in an unauthorized insurer under The Surplus Line Insurance Law, under agent's license No. .....". The surplus line agent shall properly fill in and sign the endorsement.

History: En. Sec. 187, Ch. 286, L. 1959; R.C.M. 1947, 40-3412.

33-2-304. Surplus line insurance valid. Insurance contracts procured as "surplus line" coverages from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

History: En. Sec. 188, Ch. 286, L. 1959; R.C.M. 1947, 40-3413.

33-2-305. Licensing of surplus line agent — fee and bond. Any person, while licensed as a resident insurance agent of this state as to property, casualty, and surety insurances and who is deemed by the commissioner to be qualified therefor by insurance experience and to be trustworthy, may be licensed as a surplus line agent as follows:

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

(2) License fee in the amount stated in 33-2-708 shall be paid to the commissioner. The license shall expire on the April 1 next after its date of issue.

(3) Prior to issuance of license, the applicant shall file with the commissioner and thereafter for as long as the license remains in effect he shall keep in force a bond in favor of the state of Montana in the penal sum of $2,000, with authorized corporate sureties approved by the commissioner. The bond shall be conditioned that the agent will conduct business under the license in accordance with the provisions of The Surplus Line Insurance Law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least 30 days' prior written notice thereof is filed with the commissioner.

History: En. Sec. 189, Ch. 286, L. 1959; R.C.M. 1947, 40-3414.

33-2-306. Agent's authority under license — acceptance of business from other agents. (1) Under a surplus line agent's license the licensee shall have the right to place surplus line coverages, in compliance with The Surplus Line Insurance Law, with any foreign or alien insurer or insurers not otherwise authorized to transact insurance in this state and as to such coverages to act as agent in this state for such insurer or insurers.

(2) The surplus line agent may accept surplus line business from any duly licensed agent of an authorized insurer and may compensate him therefor.

History: En. Sec. 190, Ch. 286, L. 1959; R.C.M. 1947, 40-3415.

33-2-307. Surplus lines in solvent insurers. A surplus line agent shall not knowingly place surplus line insurance with insurers unsound financially. The agent shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The agent shall so insure only either:

(1) with an insurer which is an authorized insurer in at least one state of the United States for the kind of insurance involved and which, if a stock insurer, has capital stock and surplus of at least $350,000 or, if any other type of insurer, has surplus of at least $350,000; or

(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least $400,000 within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

History: En. Sec. 191, Ch. 286, L. 1959; R.C.M. 1947, 40-3416.

33-2-308. Evidence of the insurance — changes — penalty. (1) Upon placing a surplus line coverage, the surplus line agent shall promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate of insurance signed or countersigned by the agent. Such certificate shall show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original certificate or in any other material respect as to the insurance coverage evidenced by the certificate, the agent shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a certificate as hereinabove provided, upon request therefor by the insured, the agent shall as soon as reasonably

possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the certificate theretofore issued.

(4) Any surplus line agent who knowingly or negligently issues or delivers a false certificate of insurance or fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection (2) shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

History: En. Sec. 192, Ch. 286, L. 1959; R.C.M. 1947, 40-3417.

33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus line risk which has been assumed by an unauthorized insurer pursuant to this surplus lines insurance law and if the premium thereon has been received by the surplus line agent who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for such coverage. The insurer shall be liable to the insured as to losses covered by such insurance and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the agent is indebted to the insurer with respect to such insurance or for any other cause. This provision shall not affect rights as between the insurer and the surplus line agent.

(2) Each unauthorized insurer assuming a surplus lines direct risk under this surplus line insurance law shall be deemed thereby to have subjected itself to the terms of this section.

History: En. Sec. 193, Ch. 286, L. 1959; R.C.M. 1947, 40-3418.

33-2-310. Records and annual statement. (1) Each surplus line agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, and of each certificate of insurance issued by him. The records shall be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the coverage to which it relates.

(2) Prior to April 1 of each year the agent shall file with the commissioner a statement for the calendar year preceding, showing:

(a) name and address of each insured for whom surplus line insurance was procured;

(b) name and home office address of each insurer providing such insurance;

(c) amount of each such coverage, the premium rate, and the gross premium charged therefor;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken; and

(f) such additional information as the commissioner may reasonably require.

History: En. Sec. 194, Ch. 286, L. 1959; R.C.M. 1947, 40-3419.

33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus line insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, shall not be deemed to be part of the premium for the purposes of such computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus line agent shall pay to the commissioner the amount of tax owing as to surplus line insurance business transacted by him during the preceding calendar year. If a surplus line policy covers risk or exposures only partially in this state, the tax payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

History: En. Sec. 195, Ch. 286, L. 1959; R.C.M. 1947, 40-3420.

33-2-312. Penalty for failure to file statement or pay tax. Every surplus line agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 shall be liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected shall be paid to the state treasurer and placed to the credit of the general fund. The surplus line agent's license shall also be subject to revocation as provided in 33-2-313.

History: En. Sec. 196, Ch. 286, L. 1959; R.C.M. 1947, 40-3421.

33-2-313. Revocation of agent's license. (1) The commissioner shall revoke or suspend any surplus line agent's license, together with his license as an insurance agent or solicitor:

(a) if the agent fails to file his annual statement or to remit the tax as required by law;

(b) if the agent fails to keep the records or to allow the commissioner to examine his records, as required by law;

(c) if the agent falsifies the affidavit required by 33-2-302(2); or

(d) for any of the causes for which an insurance agent's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of agents' licenses shall be applicable to suspension or revocation of a surplus line agent's license.

(3) No agent whose license has been so revoked or suspended shall again be so licensed within 1 year thereafter or until all penalties and delinquent taxes owing by him have been paid.

History: En. Sec. 197, Ch. 286, L. 1959; R.C.M. 1947, 40-3422.

33-2-314. Actions against insurer — venue — service of process. Every unauthorized insurer issuing a surplus line coverage under this surplus line insurance law shall be deemed to be doing business in this state as an unlicensed insurer and may be sued in this state upon any cause of action arising under any insurance contract so made by it. Such suit shall be brought in the district court of the county wherein the plaintiff resides.

History: En. Sec. 198, Ch. 286, L. 1959; R.C.M. 1947, 40-3423.

33-2-315. Commissioner appointed process agent — service of process. (1) Every surplus line insurer before insuring as such under this law shall in writing appoint the commissioner as its true and lawful attorney upon whom legal process in any action or proceeding against it in this state shall be served and in such writing shall agree that any such process served upon such attorney shall be of the same legal force and validity as if served in this state upon such insurer and that such authority shall continue in force so long as any liability remains outstanding against it in this state. At the time of filing such appointment, the insurer shall also file designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

(2) Service upon such an insurer shall be made upon the commissioner and in accordance with the procedures, requirements, and results as provided under 33-1-603.

History: En. Sec. 199, Ch. 286, L. 1959; R.C.M. 1947, 40-3424.

33-2-316. Rules. (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this surplus line insurance law, for any or all of the following purposes:

(a) effectuation of such law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus line insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus line insurance agents or others designed to assist such agents to comply with such law.

(2) Such rules shall be subject to the procedures and carry the penalty provided by 33-1-313.

History: En. Sec. 200, Ch. 286, L. 1959; R.C.M. 1947, 40-3425.

33-2-317. Exemptions. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed insurance agents of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft.

History: En. Sec. 201, Ch. 286, L. 1959; R.C.M. 1947, 40-3426.

Part 4 reserved

Part 5

Assets and Liabilities — Reserves

33-2-501. Assets allowed. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless such amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest thereon;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectable asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal. In no event shall interest accrued for a period in excess of 18 months be allowed as an asset.

(f) rent due or accrued on real property if such rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under 33-2-1205;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) electronic data processing machines if the cost of each such machine is at least $100,000, which cost shall be amortized in full over a period of not to exceed 10 calendar years;

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein;

(13) other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

History: En. Sec. 82, Ch. 286, L. 1959; R.C.M. 1947, 40-3001.

33-2-502. Assets expressly not allowed. In addition to assets impliedly excluded by the provisions of 33-2-501, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) goodwill, trade names, and other like intangible assets;

(2) advances to officers (other than policy loans), whether secured or not, and advances to employees, agents, and other persons on personal security only;

(3) stock of such insurer, owned by it, or any equity therein or loans secured thereby or any proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation, or business unit;

(4) furniture, fixtures (other than electronic data processing machines authorized under 33-2-501(11)), furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) in the case of title insurers, such materials and plants as the insurer is expressly authorized to invest in under 33-2-851; and

(b) in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to part 8 of this chapter or which is acquired through foreclosure of chattel mortgages acquired pursuant to 33-2-831 or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

History: En. Sec. 84, Ch. 286, L. 1959; R.C.M. 1947, 40-3003.

33-2-503. Treatment of assets. Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, or otherwise in his discretion.

History: En. Sec. 83, Ch. 286, L. 1959; R.C.M. 1947, 40-3002.

33-2-504 through 33-2-510 reserved.

33-2-511. Liabilities chargeable against assets. In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) the amount of its capital stock outstanding, if any;

(2) the amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof;

(3) with reference to life and disability insurance and annuity contracts:

(a) the amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto;

(b) reserves for disability benefits, for both active and disabled lives;

(c) reserves for accidental death benefits;

(d) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the national association of insurance commissioners, on account of such insurance;

(4) with reference to insurance other than specified in subsection (3) of this section and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this part;

(5) taxes, expenses, and other obligations due or accrued at the date of the statement.

History: En. Sec. 85, Ch. 286, L. 1959; R.C.M. 1947, 40-3004.

33-2-512. Unearned premium reserve for property, casualty, and surety. (1) As to insurance against loss or damage to property, except as provided in 33-2-513, and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the

policy's date of issue. If the commissioner does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium	
1 year or less		1/2
2 years	1st year	3/4
	2nd year	1/4
3 years	1st year	5/6
	2nd year	1/2
	3rd year	1/6
4 years	1st year	7/8
	2nd year	5/8
	3rd year	3/8
	4th year	1/8
5 years	1st year	9/10
	2nd year	7/10
	3rd year	1/2
	4th year	3/10
	5th year	1/10
Over 5 years	pro rata	

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the commissioner.

(5) This section does not apply to title insurance.

History: En. Sec. 86, Ch. 286, L. 1959; R.C.M. 1947, 40-3005.

33-2-513. Unearned premium reserve for marine and transportation insurance. As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve equal to 100% of premiums on trip risks written during the month ended as of the date of statement.

History: En. Sec. 87, Ch. 286, L. 1959; R.C.M. 1947, 40-3006.

33-2-514. Reserve for disability insurance. For all disability insurance policies, the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

History: En. Sec. 88, Ch. 286, L. 1959; R.C.M. 1947, 40-3007.

33-2-515. Loss reserves for liability insurance and workers' compensation. Where required in the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable shall be computed as follows:

(1) For all liability suits being defended under policies written more than:

(a) 10 years prior to the date as of which the statement is made, $1,500 for each suit;

(b) 5 or more and less than 10 years prior to the date as of which the statement is made, $1,000 for each suit;

(c) 3 or more and less than 5 years prior to the date as of which the statement is made, $850 for each suit.

(2) For all liability policies written during the 3 years immediately preceding the date as of which the statement is made, the reserve shall be 60% of the earned liability premiums of each of such 3 years less all losses and expense payments made under liability policies written in the corresponding years. In any event, such reserve shall for the first of such 3 years be not less than $750 for each outstanding liability suit on such year's policies.

(3) For all workers' compensation claims under policies written more than 3 years prior to the date as of which the statement is made, the reserve shall be the present value at 4% interest of the determined and the estimated future payments.

(4) For all workers' compensation claims under policies written in the 3 years immediately preceding the date as of which the statement is made, such reserve shall be 65% of the earned compensation premiums of each of such 3 years less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the case of the first year of any such 3-year period, such reserve shall be not less than the present value at 4% interest of the determined and the estimated unpaid compensation claims under policies written during such year.

History: En. Sec. 89, Ch. 286, L. 1959; R.C.M. 1947, 40-3008.

33-2-516. Inadequate reserves — increase required. If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

History: En. Sec. 90, Ch. 286, L. 1959; R.C.M. 1947, 40-3009.

33-2-517. Title insurance reserves. (1) In addition to an adequate reserve as to outstanding losses as required under 33-2-511, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten percent of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(b) During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract shall be reduced by 5% of the original amount of such reserve.

(2) The sums herein required to be reserved for unearned premiums on contracts of title insurance shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) of this section shall be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a) of this section. In the event that any title insurer has not in accordance with subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976.

History: En. Sec. 91, Ch. 286, L. 1959; amd. Sec. 1, Ch. 96, L. 1977; R.C.M. 1947, 40-3010.

33-2-518 through 33-2-520 reserved.

33-2-521. Standard valuation of reserve liabilities law — life insurance. (1) The commissioner shall annually value or cause to be valued the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States.

(2) For the purpose of making such valuation, the commissioner may employ a competent actuary who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such valuation and it may be received by the commissioner upon satisfactory proof of its correctness. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Any insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum herein provided.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(1).

33-2-522. Contracts prior to the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued prior to the operative date of 33-20-213.

(2) Except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts, the minimum standard of valuation on all policies of domestic life insurers issued prior to January 1, 1922, shall be the American experience table of mortality and interest at 3 ½% per annum, with preliminary term insurance for the first policy year, and for policies of such insurers issued subsequent to December 31, 1921, shall be the American experience table of mortality with interest at 3 ½% per annum, with preliminary term insurance for the first policy year, except as follows: If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than 20 years from the date of the policy or under an endowment preliminary term policy exceeds that charged for life insurance under 20-payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium reserve sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy.

(3) Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves

for all such policies and contracts than the minimum reserves required by this section.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(2).

33-2-523. Contracts on or after the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in 33-2-525, 3 ½% interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after March 17, 1973, and prior to January 1, 1986, 4% interest, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioner's 1941 standard ordinary mortality table for such policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after that operative date, except that for any category of such policies issued on female risks, modified net premiums and present values, referred to in 33-2-525, may be calculated, at the option of the insurer with the approval of the commissioner, according to an age younger than the actual age of the insured;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table for such policies issued prior to the operative date of 33-20-207, as amended, and the commissioner's 1961 standard industrial mortality table for such policies issued on or after that operative date;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the commissioner.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part).

33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on [the operative date of this section], as defined herein, and for all annuities and pure endowments purchased on or after that operative date, under group annuity and pure endowment contracts shall be the commissioner's reserve valuation method defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) for individual annuity and pure endowment contracts issued on or after January 1, 1986, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table or any modification of the table approved by the commissioner and 3 ½% interest;

(c) for all annuities and pure endowments purchased prior to January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(d) for all annuities and pure endowments purchased on or after January 1, 1986, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of this table approved by the commissioner and 3 ½% interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection (1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part).

33-2-525. Commissioner's reserve valuation method. (1) Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy;

(b) a net 1-year term premium for such benefits provided for in the first policy year.

(2) Reserves according to the commissioner's reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, annuity and pure endowment contracts, disability and accidental death benefits in all policies and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part).

33-2-526. Limits — options — deficiency reserves. (1) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in 33-2-525 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) Reserves for any category of policies, contracts, or benefits as established by the commissioner may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies. If such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than ½ of 1%, the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(3) If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest, and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965; amd. Sec. 1, Ch. 341, L. 1973; R.C.M. 1947, 40-3011(part).

33-2-527 through 33-2-530 reserved.

33-2-531. Deposit of reserves — domestic life insurers. (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526.

(2) Annually on or before April 1, the insurer shall so deposit any additional such securities required under subsection (1) and related to the increase of such reserves during the calendar year next preceding, as determined from the insurer's annual statement as at December 31 of such preceding year.

(3) A domestic stock life insurer may credit toward such deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section shall consist of securities and assets acquired in accordance with part 8 of this chapter except as follows:

(a) Common stocks acquired under 33-2-820 and investment trust securities acquired under 33-2-824 shall be eligible for deposit only to the extent of 50% of the value at which they are carried in the last financial statement on file with the commissioner or their cost if acquired since the date of the last statement on file.

(b) Securities acquired under 33-2-829 shall not be eligible for deposit.

(c) Only real estate acquired under 33-2-832(1) shall be eligible for deposit, and in no case shall the value of such real estate for deposit purposes exceed the original cost.

(5) Real estate mortgage loans, chattel mortgage loans, and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement shall be subject to audit at all times by the commissioner. Nonnegotiable securities where deposited with the commissioner shall be accompanied by transfer powers in due form. If the insurer uses the home office real estate under 33-2-832(1) as a deposit, a deed of trust to the commissioner shall be completed in due form and recorded prior to being deposited with the commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and such default continues for a period of 120 days, the commissioner may declare such security no longer eligible for deposit under this section.

History: En. Sec. 93, Ch. 286, L. 1959; R.C.M. 1947, 40-3012.

33-2-532. Valuation of bonds. (1) (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(i) if purchased at par, at the par value;

(ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(b) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of such securities.

(c) Unless otherwise provided by valuation established or approved by the commissioner, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section.

History: En. Sec. 94, Ch. 286, L. 1959; R.C.M. 1947, 40-3013.

33-2-533. Valuation of other securities. (1) Securities, other than those referred to in 33-2-532, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, at their appraised value, or at prices determined by him as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

History: En. Sec. 95, Ch. 286, L. 1959; R.C.M. 1947, 40-3014.

33-2-534. Valuation of property. (1) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, the cost of improvements thereafter made by the insurer, and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than 3 years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

(3) Personal property acquired pursuant to chattel mortgages made in accordance with 33-2-831 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

History: En. Sec. 96, Ch. 286, L. 1959; R.C.M. 1947, 40-3015.

33-2-535. Valuation of purchase money mortgages. Purchase money mortgages on real property referred to in 33-2-534(1) shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90% of the fair value of such real property, whichever is less.

History: En. Sec. 97, Ch. 286, L. 1959; R.C.M. 1947, 40-3016.

Part 6

Deposits

33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner shall be accepted and held and shall be subject to the provisions of this part:

(1) deposits required under this code for authority to transact insurance in this state;

(2) deposits of domestic insurers when made pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province, or country;

(3) deposits of reserves made by domestic life insurers under 33-2-531;

(4) deposits in such additional amounts as are permitted to be made under 33-2-609.

History: En. Sec. 132, Ch. 286, L. 1959; R.C.M. 1947, 40-3201.

33-2-602. Purpose of deposit. Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under 33-2-111 shall be held for the purpose stated in such section.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province, or country and as required by the laws of such other state, province, or country shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.

(3) Deposits of reserves made by domestic life insurers under 33-2-531 shall be held for the common benefit of all the holders of its life insurance policies and annuity contracts.

(4) Deposits required pursuant to the retaliatory law, 33-2-709, shall be held for such purposes as is required by such law and as specified by the commissioner's order requiring such deposit to be made.

History: En. Sec. 133, Ch. 286, L. 1959; R.C.M. 1947, 40-3202.

33-2-603. Securities eligible for deposit. (1) All such deposits required under 33-2-111 for authority to transact insurance in this state shall consist of certificates of deposit or any combination of securities of the kinds described in the following sections of this code: 33-2-811(1), 33-2-812, and 33-2-813.

(2) All other deposits of a domestic insurer held in this state pursuant to the laws of another state, province, or country shall be comprised of assets of the kinds described in subsection (1) above and of such additional kind or kinds of securities required or permitted by the laws of such state, province, or country except common stocks, mortgages of any kind, and real estate.

(3) Deposits of the reserves of a domestic life insurer shall consist of securities and assets as provided under 33-2-531.

(4) Deposits of foreign insurers made in this state under the retaliatory law, 33-2-709, shall consist of such assets as are required by the commissioner pursuant to such law.

History: En. Sec. 134, Ch. 286, L. 1959; R.C.M. 1947, 40-3203.

33-2-604. Depositary or custodian. (1) Deposits made in this state under this code shall be made through the office of the commissioner in safe deposit or under custodial arrangements as required or approved by the commissioner consistent with the purposes of such deposit, with an established safe deposit institution, bank, or trust company located in the city of Helena, state of Montana, selected by the insurer with the commissioner's approval.

(2) No safe deposit shall be used for any such deposit unless the box or compartment in which are kept the assets and securities comprising the deposit requires two separate and distinctly differing keys or one key and a combination, in the case of a box having a combination lock, to open the same. One of such keys or the combination shall at all times be kept by the commissioner, and the other key or the combination shall at all times be kept by the insurer. Such box or compartment shall not at any time be opened or remain open except through the joint action and in the presence of both the commissioner and a duly authorized officer or representative of the insurer.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising its deposit and in the collection of interest and other income currently accruing thereon, the insurer may, with the commissioner's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state, so long as receipts representing all such securities are issued by such custodian bank or trust company and are held in safe deposit or custody subject to the requirements of subsections (1) and (2) of this section.

(4) The form and terms of all such depositary or custodial agreements shall be as prescribed or approved by the commissioner, consistent with the applicable provisions of this code.

(5) The compensation and expenses of the depositary or custodian shall be borne by the insurer.

History: En. Sec. 135, Ch. 286, L. 1959; R.C.M. 1947, 40-3204.

33-2-605. Record of deposits — liability of commissioner and state. (1) The commissioner shall give to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

(3) The commissioner and the state of Montana shall have no liability as to the safekeeping of any such deposit by the depositary or custodian thereof.

History: (1), (2)En. Sec. 136, Ch. 286, L. 1959; Sec. 40-3205, R.C.M. 1947; (3)En. Sec. 137, Ch. 286, L. 1959; Sec. 40-3206, R.C.M. 1947; R.C.M. 1947, 40-3205, 40-3206.

33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code shall be duly assigned to the commissioner and his successors in office. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604(3), the custodian's receipt for such securities shall be so delivered, if negotiable, or assigned to the commissioner if thereby legal title to such securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner and his successors in office all other assets so deposited. Upon release to the insurer of any such asset or security, the commissioner shall reassign or transfer or reconvey the same to the insurer.

History: En. Sec. 138, Ch. 286, L. 1959; R.C.M. 1947, 40-3207.

33-2-607. Appraisal. The commissioner may, in his discretion, prior to acceptance for deposit of any particular asset or security or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

History: En. Sec. 139, Ch. 286, L. 1959; R.C.M. 1947, 40-3208.

33-2-608. Rights of insurer during solvency. So long as the insurer remains solvent and is in compliance with this code it may:

(1) demand, receive, sue for, and recover the income from the assets or securities deposited;

(2) exchange and substitute for the deposited assets or securities, or any part thereof, other eligible assets or securities of equivalent or greater value; and

(3) at any reasonable time inspect any such deposit.

History: En. Sec. 140, Ch. 286, L. 1959; R.C.M. 1947, 40-3209.

33-2-609. Excess deposits. An insurer may so deposit and have on deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than 20% of such required or permitted deposit or $50,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of assets and securities deposited and to facilitate the exchange and substitution of such assets and securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in 33-2-612(4).

History: En. Sec. 141, Ch. 286, L. 1959; R.C.M. 1947, 40-3210.

33-2-610. Levy upon deposit. No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits pursuant to the retaliatory law, 33-2-709, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is made.

History: En. Sec. 142, Ch. 286, L. 1959; R.C.M. 1947, 40-3211.

33-2-611. Deficiency of deposit — revocation of certificate. If for any reason the market value of assets and securities of an insurer held on deposit in this state or in another state under custodial arrangements authorized by 33-2-604(3) falls below the amount required under this code to be so held, the insurer shall promptly deposit other or additional assets or securities eligible for deposit under this part and in amount sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice thereof by registered or certified mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

History: En. Sec. 143, Ch. 286, L. 1959; R.C.M. 1947, 40-3212.

33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604(3), shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required, or if a deposit required under the retaliatory law, 33-2-709, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver such assets and securities to such insurer or insurers so assuming such risks, upon:

(a) written notice to him by such domestic insurer that such assets and securities have been duly assigned, transferred, and set over to such reinsuring insurer or insurers, which notice shall be accompanied by a duly verified copy of such assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in amount not less than the reserves then and thereafter of the policies and contracts so reinsured, in addition to any other deposit of such insurer required or permitted by law, and, unless the insurer is required so to deposit and maintain on deposit all of its reserves, that such deposit of such reserves will be so deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts so reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by such insurer when such insurer has ceased transacting insurance in this state or in the United States and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 9 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

History: En. Sec. 144, Ch. 286, L. 1959; R.C.M. 1947, 40-3213.

Part 7

Reports, Fees, and Taxes

33-2-701. Annual statement — revocation for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement shall be in such general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement shall be verified by the oath of the insurer's president or vice-president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may, in his discretion, waive any such verification under oath.

(2) The statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file such statement with the commissioner as soon as reasonably possible. The statement shall be verified by the insurer's United States manager or other officer duly authorized.

(3) The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may in his discretion suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due.

(4) Any director, officer or agent, or employee of any company who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more than $1,000.

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

History: En. Sec. 65, Ch. 286, L. 1959; amd. Sec. 1, Ch. 27, L. 1967; R.C.M. 1947, 40-2820.

33-2-702 through 33-2-704 reserved.

33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (3) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes only the risk portion of the charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of 2 ¾ % of such premiums. Where any insurer has not less than 50% of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, as defined in 33-1-209, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (3) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(4) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an

undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(5) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(6) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(part).

33-2-706. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer or any self-insurer who in this state so procures or continues excess loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured through a surplus line agent pursuant to The Surplus Line Insurance Law or exempted from such law under 33-2-317, shall, within 30 days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also a subject of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state or for which premiums in whole or in part are remitted directly or indirectly from within this state shall be deemed to be insurance procured or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance a tax at the rate of 2 ¾% of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued, or renewed and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

(6) The tax shall be collectable from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify any provision of 33-2-104 or 33-2-105 or any other provision of this code.

(8) This section does not apply as to life or disability insurances.

History: En. Sec. 202, Ch. 286, L. 1959; amd. Sec. 1, Ch. 147, L. 1977; R.C.M. 1947, 40-3427.

33-2-707. Preemption of taxing. The state of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general agents and agents as such and on the intangible property of insurers or such agents. No county, city, municipality, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general agents and agents as such, any such tax, license, or fee additional to such as are levied by the legislature of Montana in this code.

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969; amd. Sec. 1, Ch. 237, L. 1971; R.C.M. 1947, 40-2821(6).

33-2-708. Fees and licenses. (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificate of authority, articles of incorporation (except as provided in subsection (b), below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ....$ 30.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority 300.00

(iii) reinstatement of certificate of authority 25.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) filing bylaws or amendment thereto where required 5.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) agent's license, property, casualty, surety, title insurance agents, including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) application for original license, including issuance of license, if issued ... 10.00

(ii) appointment of agent, each insurer 5.00

(iii) annual renewal or appointment of agent, each insurer 5.00

(iv) temporary license 10.00

(f) nonresident agent's license, property, casualty, title insurance agents, and disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) application for original license, including issuance of license, if issued ...100.00

(ii) appointment of agent, each insurer 5.00

(iii) annual renewal or appointment of agent, each insurer 100.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued	5.00
(ii) annual continuation of license	5.00
(h) agent's license, life, disability insurance:	
(i) application for original license, each insurer	5.00
(ii) annual continuation or renewal of license, each insurer	5.00
(iii) temporary license, each insurer	5.00
(i) nonresident agent's license, life, disability insurance:	
(i) application for original license, including issuance of license, if issued, each insurer	100.00
(ii) annual continuation or renewal of license, each insurer	100.00
(j) examination for license as agent or solicitor, each examination	10.00
(k) surplus line agent's license:	
(i) application for original license and for issuance of license, if issued	25.00
(ii) annual renewal or continuation of license	25.00
(l) adjuster's license:	
(i) application for original license and for issuance of license, if issued	10.00
(ii) annual continuation or renewal of license	10.00
(m) insurance vending machine license, each machine, each year	10.00
(n) commissioner's certificate under seal (except when on certificates of authority or licenses)	3.00
(o) copies of documents on file in the commissioner's office, per page	.50
(p) policy forms:	
(i) filing each policy form	25.00
(ii) filing each application, rider, endorsement, amendment, insert page, schedule or rates, and clarification of risks	10.00
(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days	50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section.

History: En. Sec. 45, Ch. 286, L. 1959; amd. Sec. 1, Ch. 32, L. 1969; amd. Sec. 1, Ch. 334, L. 1973; amd. Sec. 1, Ch. 444, L. 1975; amd. Sec. 1, Ch. 322, L. 1977; R.C.M. 1947, 40-2726(1), (2).

33-2-709. Retaliatory fees, taxes, and other obligations. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses, and other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon Montana insurers or upon the agents or representatives of such insurers which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers or upon the agents or representatives of such insurers of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers or upon the agents or representatives of such insurers of such other state or country doing business or seeking to do business in Montana. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Montana insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to personal income taxes, ad valorem taxes on real or personal property, or special purpose obligations or assessments imposed

by another state in connection with particular kinds of insurance other than property insurance, except that deductions from premium taxes or other taxes otherwise payable allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) (a) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 6 months after January 1, 1961, whichever date is the later, and may be any one of the following states:

(i) that in which the insurer was first authorized to transact insurance;

(ii) that in which is located the insurer's principal place of business in the United States;

(iii) that in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

(b) If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

History: En. Sec. 71, Ch. 286, L. 1959; R.C.M. 1947, 40-2826.

Part 8

Investments

33-2-801. Scope of part. Except as to 33-2-852, this part shall apply to domestic insurers only.

History: En. Sec. 98, Ch. 286, L. 1959; R.C.M. 1947, 40-3101.

33-2-802. Eligibility of investments. (1) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in this part.

(2) Any particular investment held by an insurer on January 1, 1961, which was a legal investment at the time it was made and which the insurer was legally entitled to possess immediately prior to January 1, 1961, shall be deemed to be an eligible investment.

(3) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (2) above.

(4) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31 next preceding date of acquisition of the investment by the insurer or as shown by a current financial statement filed with the commissioner.

History: En. Sec. 99, Ch. 286, L. 1959; R.C.M. 1947, 40-3102.

33-2-803. General qualifications of investments. (1) No security or investment, other than real and personal property acquired under 33-2-832, shall be eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(2) No security or investment shall be eligible for purchase at a price above its market value.

(3) No provision of this part shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful

distribution of assets or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under this part shall be disposed of pursuant to 33-2-842 if personal property or securities or pursuant to 33-2-841 if real property.

History: En. Sec. 100, Ch. 286, L. 1959; R.C.M. 1947, 40-3103.

33-2-804. Prohibited investments and investment underwriting. (1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not invest in or lend its funds upon the security of:

(a) issued shares of its own capital stock, except for the purpose of mutualization under 33-3-215;

(b) except with the advance consent of the commissioner, securities issued by any corporation or enterprise the controlling interest of which is, or after such acquisition by the insurer will be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under 33-2-822 shall not be subject to this provision.

(c) any note or other evidence of indebtedness of any director, officer, or controlling stockholders of the insurer, except as to policy loans authorized under 33-2-825.

(2) No insurer shall underwrite or participate in the underwriting of an offering of securities or property by any other person.

History: En. Sec. 130, Ch. 286, L. 1959; R.C.M. 1947, 40-3133.

33-2-805. Authorization of investment or loan. An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan. The minutes of any such committee shall be recorded, and regular reports of such committee shall be submitted to the board of directors.

History: En. Sec. 101, Ch. 286, L. 1959; R.C.M. 1947, 40-3104.

33-2-806. Diversification of investments. An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer shall not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction shall not apply as to general obligations of the United States of America or of any state or include policy loans made under 33-2-825.

(2) An insurer shall not invest in or hold at any one time more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner given with respect to voting rights of preference stock during default of dividends. This provision does not apply as to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1), 33-2-812, and 33-2-830.

(4) A life insurer shall also invest and keep invested its funds in amount not less than the reserves under its life insurance policies and annuity contracts, other

than variable annuities, in force in cash and/or the securities or investments provided for under 33-2-531.

(5) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

(6) An insurer may invest and have invested at any one time in aggregate amount not more than 10% of its assets in all stocks under 33-2-820, 33-2-821, and 33-2-824. Determination of the amount which an insurer has invested in common stocks for the purposes of this provision shall be based on the cost of such stocks to the insurer. This provision shall not apply as to stock of a controlled or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

(7) Except with the commissioner's consent, an insurer shall not have invested at any one time more than 10% of its assets in the class of securities described in any one of the following sections: 33-2-814, 33-2-819, and 33-2-823.

(8) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other specific limits shall apply as stated in the sections dealing with other respective kinds of investments.

History: En. Sec. 102, Ch. 286, L. 1959; R.C.M. 1947, 40-3105.

33-2-807 through 33-2-810 reserved.

33-2-811. United States or Canadian government obligations — loans guaranteed. (1) An insurer may invest in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States of America or of Canada or for which the full faith and credit of the United States of America or of Canada is pledged for the payment of principal and interest.

(2) An insurer may invest in loans guaranteed as to principal and interest by the United States of America or Canada or by any agency or instrumentality of the United States of America or Canada.

History: (1)En. Sec. 103, Ch. 286, L. 1959; Sec. 40-3106, R.C.M. 1947; (2)En. Sec. 104, Ch. 286, L. 1959; Sec. 40-3107, R.C.M. 1947; R.C.M. 1947, 40-3106, 40-3107.

33-2-812. State, county, municipal, and school obligations. An insurer may invest any of its funds in bonds or other evidences of indebtedness which are general obligations of or are secured by pledge of specific revenues by this state or of any other state of the United States or province of Canada or of any of the counties or incorporated cities or towns or duly organized school districts or other taxing districts of such states or provinces.

History: En. Sec. 105, Ch. 286, L. 1959; R.C.M. 1947, 40-3108.

33-2-813. Revenue bonds. An insurer may invest in bonds, notes, or evidences of indebtedness of any state of the United States or province of Canada or any political subdivision thereof or any agency or instrumentality of any of the foregoing, which are payable from revenues or earnings specifically pledged for the payment of the principal and interest on such obligations and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained.

History: En. Sec. 106, Ch. 286, L. 1959; R.C.M. 1947, 40-3109.

33-2-814. Improvement district obligations. An insurer may invest in bonds, notes, or evidences of indebtedness issued by any local improvement district in this or any other state to finance local improvements authorized by law if the principal and interest of such obligations is payable from assessments on real property within such local improvement district. No such investment shall be made if the face value of all such obligations, together with all similar obligations of such improvement district outstanding, exceed 50% of the market value of the real property and improvements upon which such bonds or the assessments for the payment of principal and interest thereon are liens inferior only to the liens for general ad valorem property taxes.

History: En. Sec. 107, Ch. 286, L. 1959; R.C.M. 1947, 40-3110.

33-2-815. Irrigation district obligations. An insurer may invest in the bonds, notes, or evidences of indebtedness of any irrigation district organized under the laws of Montana.

History: En. Sec. 108, Ch. 286, L. 1959; R.C.M. 1947, 40-3111.

33-2-816. Obligations or stock of certain federal agencies. An insurer may invest in the obligations and/or stock, where stated, of the following agencies of the government of the United States of America, whether or not such obligations are guaranteed by such government:

(1) commodity credit corporation;
(2) federal intermediate credit banks;
(3) federal land banks;
(4) central bank for cooperatives;
(5) federal home loan banks and stock thereof;
(6) federal national mortgage association and stock thereof when acquired in connection with sale of mortgage loans to such association;
(7) any other similar agency of the government of the United States of America and of similar financial quality.

History: En. Sec. 109, Ch. 286, L. 1959; R.C.M. 1947, 40-3112.

33-2-817. International bank. An insurer may invest in obligations issued, assumed, or guaranteed by the international bank for reconstruction and development.

History: En. Sec. 110, Ch. 286, L. 1959; R.C.M. 1947, 40-3113.

33-2-818. Corporate bonds and debentures. (1) An insurer may invest in bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada or any state or province thereof, which are not in default as to principal or interest and which are secured by adequate collateral and bear fixed interest and if during each of any 3, including either of the last 2, of the 5 fiscal years next preceding the date of acquisition by the insurer the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges, as hereinafter defined, shall have been not less than 1 ¼ times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of common stock.

(2) An insurer may invest in secured and unsecured obligations of such institutions, other than obligations described in subsection (1), bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by such insurer have averaged per year not less than 1 ½ times its average annual fixed charges applicable to such period and if during either of the last 2 years of such

period such net earnings have been not less than 1 ½ times its fixed charges for such year.

(3) An insurer may invest in adjustment, income, or other contingent interest obligations of such institutions if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than 1 ½ times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last 2 years of such period such net earnings shall have been not less than 1 ½ times the sum of its fixed charges and maximum contingent interest for such year.

(4) Within the meaning of this section, the term "net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal income taxes, depreciation, and depletion but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming, or guaranteeing institutions. The term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

History: En. Sec. 111, Ch. 286, L. 1959; R.C.M. 1947, 40-3114.

33-2-819. Preferred or guaranteed stock. An insurer may invest in preferred or guaranteed stocks or shares of any solvent institution existing under the laws of the United States of America or of Canada or of any state or province thereof if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition of the investment by such insurer are eligible as investments under this part and if the net earnings of such institution available for its fixed charges during each of the last 2 years have been, and during each of the last 5 years have averaged, not less than 1 ½ times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements. For the purposes of this section such computation shall refer to the fiscal years immediately preceding the date of acquisition of the investment by the insurer, and the term "preferred dividend requirement" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not.

History: En. Sec. 112, Ch. 286, L. 1959; R.C.M. 1947, 40-3115.

33-2-820. Common stocks. An insurer may invest in nonassessable common stocks, other than insurance stocks, of any solvent corporation existing under the laws of the United States of America or of Canada or any state or province thereof if cash or stock dividends have been earned and paid on its common stock in each of the 5 fiscal years preceding such acquisition and if, further, all prior obligations or preference stock of such corporation, if any, are eligible for investment under this part. If the issuing corporation has not been in legal existence for the whole of the 5 preceding fiscal years but was formed as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common stock under this section shall be based upon consolidation pro forma statements of the predecessor or constituent institutions.

History: En. Sec. 113, Ch. 286, L. 1959; R.C.M. 1947, 40-3116.

33-2-821. Insurance stocks. (1) An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of 33-2-819 and 33-2-820.

(2) With the commissioner's consent, an insurer may acquire and hold the controlling interest in the outstanding voting stock of another stock insurer formed

under the laws of this or another state. All stocks under this subsection shall be subject to the limitation as to amount as provided in 33-2-822.

History: En. Sec. 114, Ch. 286, L. 1959; R.C.M. 1947, 40-3117.

33-2-822. Stocks of subsidiaries. With the commissioner's consent, an insurer may invest in the stock of its wholly-owned subsidiary insurance corporation or in the stock of its wholly-owned subsidiary business corporation formed under the laws of this state and necessary and incidental to the convenient operation of the insurer's insurance business or to the administration of any of its investments. All of the insurer's investments under this section, together with its investments in insurance stocks under 33-2-821(2), shall not at any time exceed the amount of the investing insurer's surplus, if a life insurer, or its surplus to policyholders if other than a life insurer.

History: En. Sec. 115, Ch. 286, L. 1959; R.C.M. 1947, 40-3118.

33-2-823. Equipment trust certificates. An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, which obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for the use or purchase of such transportation equipment.

History: En. Sec. 116, Ch. 286, L. 1959; R.C.M. 1947, 40-3119.

33-2-824. Investment trust securities. An insurer may invest in the securities of any management type investment company or investment trust registered with the federal securities and exchange commission under the Investment Company Act of 1940, as from time to time amended, if such investment company or trust has assets not less than $50 million as at date of investment by the insurer.

History: En. Sec. 117, Ch. 186, L. 1959; R.C.M. 1947, 40-3120.

33-2-825. Policy loans. A life insurer may lend to its policyholder, upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

History: En. Sec. 118, Ch. 286, L. 1959; R.C.M. 1947, 40-3121.

33-2-826. Collateral loans. An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this part. As at date made, no such loan shall exceed in amount 75% of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this part to be invested in the respective categories of securities so pledged.

History: En. Sec. 119, Ch. 286, L. 1959; R.C.M. 1947, 40-3122.

33-2-827. Savings and loan. To the extent that such an account is insured by the federal savings and loan insurance corporation, an insurer may invest in share or savings accounts of savings and loan and building and loan associations.

History: En. Sec. 120, Ch. 286, L. 1959; R.C.M. 1947, 40-3123.

33-2-828. Foreign securities. An insurer authorized to transact insurance in a foreign country may make investments, in aggregate amount not exceeding its deposit and obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to like investments required pursuant to this part for investments in the United States of America. Canadian securities eligible for investment under other provisions of this part are not subject to this section.

History: En. Sec. 121, Ch. 286, L. 1959; R.C.M. 1947, 40-3124.

33-2-829. Miscellaneous investments. (1) An insurer may make loans or investments not otherwise expressly permitted under this part, in aggregate amount not over 5% of the insurer's assets and not over 1% of such assets as to any one such loan or investment, if such loan or investment fulfills the requirements of 33-2-803 and otherwise qualifies as a sound investment. But no such loan or investment shall be represented by:

(a) any item described in 33-2-502 or any loan or investment otherwise expressly prohibited;

(b) agents' balances or amounts advanced to or owing by agents or former agents of the insurer, whether or not secured, except as to policy loans, mortgage loans, and collateral loans otherwise authorized under this part;

(c) any category of loans or investments eligible under any other provisions of this part;

(d) any asset theretofore acquired or held by the insurer under any other category of loans or investments eligible under this part.

(2) The insurer shall keep a separate record of all loans and investments made under this section.

History: En. Sec. 122, Ch. 286, L. 1959; R.C.M. 1947, 40-3125.

33-2-830. Real estate mortgages. (1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under 33-2-828.

(2) "Improved real estate" means all farm lands used for tillage, crop, or pasture, timberlands, and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

(3) (a) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(i) two-thirds of the value of the real property or leasehold securing the same, provided, however, if said real property or leasehold consists of one- or two-family residential property, three-fourths of said value;

(ii) the amount of any insurance or guaranty of such loan by the United States of America or by any agency or instrumentality thereof; or

(iii) the amounts provided in subsection (i) herein, plus the amount by which the excess of such loan over such amount is insured or guaranteed by the United States of America or by any agency or instrumentality thereof.

(b) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or invested shall not exceed the unpaid portion of the purchase price.

(4) No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such investment.

(5) No such mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this section unless the entire series or issue which is secured by the same mortgage or deed of trust is held by such insurer or unless the insurer holds a senior participation in such mortgage or deed of trust, giving it substantially the rights of a first mortgagee.

(6) No mortgage loan upon a leasehold shall be made or acquired pursuant to this section unless the terms thereof shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient completely to amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term which may be provided by an enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding 35 years.

History: En. Sec. 123, Ch. 286, L. 1959; amd. Sec. 1, Ch. 20, L. 1961; R.C.M. 1947, 40-3126.

33-2-831. Chattel mortgages. (1) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to 33-2-830, an insurer may lend or invest an amount not exceeding 20% of the amount loaned on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than 5 years and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses, motels, and hotels, room furniture and furnishings.

(3) Prior to the acquisition of a chattel mortgage hereunder, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(4) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this part.

History: En. Sec. 124, Ch. 286, L. 1959; R.C.M. 1947, 40-3127.

33-2-832. Real estate. An insurer may invest in real estate only if used for the purposes or acquired in the manners and within the limits as follows:

(1) the land and the buildings thereon in which it has its principal office and such other real estate as shall be requisite for its convenient accommodation in the transaction of its business. Except with the consent of the commissioner, all such investments shall not aggregate more than 5% of the insurer's assets.

(2) real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of its business;

(3) real estate acquired in part payment of the consideration on the sale of other real estate owned by it if such transaction does not increase the insurer's investment in real estate;

(4) real estate acquired by gift or devise or through merger, consolidation, or bulk reinsurance of another insurer under this code;

(5) the seller's interest in real property subject to an agreement of purchase or sale. The sum invested in any such parcel of real estate shall not exceed three-fourths of the market value of such parcel provided the same consists of one- or two-family residential property and two-thirds of the market value of all other such parcels of real estate.

(6) real estate or any interest therein acquired or held by purchase, lease, or otherwise, other than real estate to be used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement, or club purposes, acquired as an investment for the production of income or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, improve, develop, maintain, manage, lease, sell, and convey real estate acquired by it under this provision. An insurer shall not, except with the commissioner's consent, have at any one time invested in real estate under this subsection an amount exceeding 5% of its assets.

(7) additional real estate and equipment incident to real estate if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under subsections (2), (3), (4), or (6) of this section. Such real estate and equipment shall be included, together with the real estate for the enhancement of which it was acquired, for the purpose of applicable investment limits and shall be subject to disposal at the same time and under the same conditions as applying to such enhanced real estate under 33-2-841.

(8) except with the commissioner's consent, all real estate owned by the insurer under this section, except as to seller's interest specified in subsection (5), shall not at any one time exceed 10% of the insurer's assets.

History: En. Sec. 125, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1961; R.C.M. 1947, 40-3128.

33-2-833. Obligations of home owners' loan corporation, federal housing administrator, and national mortgage associations. Notwithstanding other provisions of the law, it shall be lawful for any insurance company operating under the laws of this state to invest the funds or moneys in their custody or possession, eligible for investment, in bonds of the home owners' loan corporation, in debentures issued by the federal housing administrator, and in obligations of national mortgage associations.

History: En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; R.C.M. 1947, 35-142(part).

33-2-834 through 33-2-840 reserved.

33-2-841. Time limit for disposal of real estate — extension. (1) Except as stated in subsection (3), the insurer shall dispose of real estate acquired under 33-2-832(1) within 5 years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

(2) Except as stated in subsection (3), the insurer shall dispose of real estate acquired under subsections (2), (3), and (4) of 33-2-832 within 5 years after the date of acquisition.

(3) Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period, as specified in such order, within which the insurer shall dispose of any particular parcel of such real estate unless the insurer elects to hold such real estate as an investment for income purposes under 33-2-832(6), in which event thereafter such real estate shall be deemed to have

been acquired at a cost equal to its book value at the time of such election and to be held under and subject to the provisions of such subsection (6).

History: En. Sec. 126, Ch. 286, L. 1959; R.C.M. 1947, 40-3129.

33-2-842. Time limit for disposal of other ineligible property and securities — extension. (1) Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility, except that any security or personal property acquired under any agreement of bulk reinsurance, merger, or consolidation may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 3, 33-2-1211, or 33-2-1212.

(2) Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

History: En. Sec. 127, Ch. 286, L. 1959; R.C.M. 1947, 40-3130.

33-2-843. Failure to dispose of real estate, personal property, or securities — effect — penalty. (1) Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner, as provided in 33-2-841 or 33-2-842, shall not be allowed as an asset of the insurer.

(2) The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner may, in his discretion, suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the investment within such reasonable time as the commissioner may, by his order, specify.

History: En. Sec. 128, Ch. 286, L. 1959; R.C.M. 1947, 40-3131.

33-2-844 through 33-2-850 reserved.

33-2-851. Special investments by title insurer. (1) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its abstract plant and equipment and, with the commissioner's consent, in stock of abstract companies. If the insurer transacts kinds of insurance in addition to title insurance, for the purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance, but the capital so assigned to title insurance shall in no event be less than $100,000.

(2) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under 33-2-517.

(3) Any such abstract plant and equipment shall not be so allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost.

History: En. Sec. 129, Ch. 286, L. 1959; R.C.M. 1947, 40-3132.

33-2-852. Investments of foreign insurers. The investment portfolio of a foreign insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as that required under this part for similar funds of like domestic insurers. For the purposes of this provision, the domicile of an alien insurer, other than a life insurer formed under the laws of Canada, shall be deemed to be that state in which it maintains its principal deposit.

History: En. Sec. 131, Ch. 286, L. 1959; R.C.M. 1947, 40-3134.

Part 9

Rehabilitation and Liquidation

33-2-901. Definitions. For the purpose of this part, the following definitions apply:

(1) "Ancillary state" means any state other than a domiciliary state.

(2) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this part for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(3) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has at the commencement of delinquency proceedings the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state.

(4) "Foreign country" means territory not in any state.

(5) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons. As to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets.

(6) "Impairment" or "insolvency" means the capital of a stock insurer or the surplus of a mutual or reciprocal insurer shall be deemed to be impaired and the insurer shall be deemed to be insolvent when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock if a stock insurer, or the minimum surplus if a mutual or reciprocal insurer required by this code to be maintained for the kind or kinds of insurance it is then authorized to transact.

(7) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of or to liquidation, rehabilitation, reorganization, or conservation by the commissioner or the equivalent insurance supervisory official of another state.

(8) "Preferred claim" means any claim with respect to which the law of the state or of the United States accords priority of payments from the general assets of the insurer.

(9) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.

(10) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act are in force, including the provisions requiring that the commissioner of insurance or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(11) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than 4 months prior to the commencement of delinquency proceedings in the state of the

insurer's domicile have become liens upon specific assets by reason of judicial process.

(12) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but not including any general assets.

(13) "State" means any state of the United States and also the District of Columbia and Puerto Rico.

History: En. Sec. 566, Ch. 286, L. 1959; R.C.M. 1947, 40-5101.

33-2-902. Jurisdiction of delinquency proceedings — venue — exclusiveness of remedy — appeal. (1) The district court is vested with exclusive original jurisdiction of delinquency proceedings under this part and is authorized to make all necessary and proper orders to carry out the purposes of this part.

(2) The venue of delinquency proceedings against a domestic insurer shall be in the county of the insurer's principal place of business. The venue of such proceedings against a foreign and alien insurer shall be in Lewis and Clark County.

(3) Delinquency proceedings pursuant to this part shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer. No court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the commissioner.

(4) An appeal shall lie to the supreme court from an order granting or refusing rehabilitation, liquidation, or conservation and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

History: En. Sec. 567, Ch. 286, L. 1959; R.C.M. 1947, 40-5102.

33-2-903. Commencement of delinquency proceedings. The commissioner shall commence any such proceedings by application to the court for an order directing the insurer to show cause why the commissioner should not have the relief prayed for. On the return of such order to show cause and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers, or the public may require.

History: En. Sec. 568, Ch. 286, L. 1959; R.C.M. 1947, 40-5103.

33-2-904. Injunctions — bond not required of commissioner. (1) Upon application by the commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this part issue such injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, waste of the assets of the insurer, the commencement or prosecution of any actions, the obtaining of preferences, judgments, attachments, or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

History: En. Sec. 569, Ch. 286, L. 1959; R.C.M. 1947, 40-5104.

33-2-905. Grounds for rehabilitation — domestic insurers. The commissioner may apply to the court for an order appointing him as receiver of and directing him to rehabilitate a domestic insurer upon one or more of the following grounds, that the insurer:

(1) is impaired or insolvent;

(2) has refused to submit any of its books, records, accounts, or affairs to reasonable examination by the commissioner;

(3) has concealed or removed records or assets or otherwise violated 33-3-401;

(4) has failed to comply with an order of the commissioner to make good an impairment of capital or surplus or both;

(5) has transferred or attempted to transfer substantially its entire property or business or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without having first obtained the written approval of the commissioner;

(6) has willfully violated its charter or articles of incorporation or any law of this state;

(7) has an officer, director, or manager who has refused to be examined under oath concerning its affairs;

(8) has been or is the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this code, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder;

(9) has consented to such an order through a majority of its directors, stockholders, members, or subscribers;

(10) has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it within 30 days after the judgment became final, within 30 days after the time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final termination, whichever date is the latest.

History: En. Sec. 570, Ch. 286, L. 1959; R.C.M. 1947, 40-5105.

33-2-906. Grounds for liquidation. The commissioner may apply to the court for an order appointing him as receiver (if his appointment as receiver shall not be then in effect) and directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in 33-2-905, or if such insurer:

(1) has ceased transacting business for a period of 1 year; or

(2) is an insolvent insurer and has commenced voluntary liquidation or dissolution or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code.

History: En. Sec. 571, Ch. 286, L. 1959; R.C.M. 1947, 40-5106.

33-2-907. Grounds for conservation — foreign insurers. The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver and directing him to conserve the assets within this state of a foreign insurer upon any of the following grounds:

(1) upon any of the grounds specified in 33-2-905 or 33-2-906; or

(2) upon the ground that its property has been sequestrated in its domiciliary sovereignty or in any other sovereignty.

History: En. Sec. 572, Ch. 186, L. 1959; R.C.M. 1947, 40-5107.

33-2-908. Grounds for conservation — alien insurers. The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver and directing him to conserve the assets within this state of any alien insurer upon any of the following grounds:

(1) upon any of the grounds specified in 33-2-905 or 33-2-906;

(2) upon the ground that the insurer has failed to comply, within the time designated by the commissioner, with an order made by him to make good an impairment of its trusteed funds; or

(3) upon the ground that the property of the insurer has been sequestrated in its domiciliary sovereignty or elsewhere.

History: En. Sec. 573, Ch. 186, L. 1959; R.C.M. 1947, 40-5108.

33-2-909. Grounds for ancillary liquidation — foreign insurers. The commissioner may apply to the court for an order appointing him as ancillary receiver of and directing him to liquidate the business of a foreign insurer having assets, business, or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of such insurer.

History: En. Sec. 574, Ch. 286, L. 1959; R.C.M. 1947, 40-5109.

33-2-910 through 33-2-914 reserved.

33-2-915. Order of rehabilitation — termination of proceedings. (1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be made or entered except when, after a hearing, the court has determined that the purposes of the proceeding have been fully accomplished.

History: En. Sec. 575, Ch. 286, L. 1959; R.C.M. 1947, 40-5110.

33-2-916. Order of liquidation — dissolution — domestic insurers. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner of insurance or in the name of the insurer, as the court may direct, and to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply for and secure an order dissolving the corporate existence of a domestic insurer upon his application for an order of liquidation of such insurer or at any time after such order has been granted.

History: En. Sec. 576, Ch. 286, L. 1959; R.C.M. 1947, 40-5111.

33-2-917. Order of liquidation — alien insurers. An order to liquidate the business of a United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.

History: En. Sec. 577, Ch. 286, L. 1959; R.C.M. 1947, 40-5112.

33-2-918. Order of conservation or ancillary liquidation of foreign or alien insurers. (1) An order to conserve the assets of a foreign or alien insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) An order to liquidate the assets in this state of a foreign insurer shall require the commissioner forthwith to take possession of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this part.

History: En. Sec. 578, Ch. 286, L. 1959; R.C.M. 1947, 40-5113.

33-2-919 and 33-2-920 reserved.

33-2-921. Conduct of delinquency proceedings against domestic and alien insurers. (1) Whenever under this part a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state. He shall have the right to recover the same and reduce the same to possession, except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets.

(5) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this part for the purpose of rehabilitating, liquidating, or conserving the affairs or assets of the insurer.

(6) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him and he may employ such counsel, clerks, and assistants as he deems necessary. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

(7) The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings

shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer.

History: En. Sec. 579, Ch. 286, L. 1959; R.C.M. 1947, 40-5114.

33-2-922. Conduct of delinquency proceedings against foreign insurers. (1) Whenever under this part an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in 33-2-909 if:

(a) he finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; or

(b) 10 or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer located in this state. He shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state, except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state.

History: En. Sec. 580, Ch. 286, L. 1959; R.C.M. 1947, 40-5115.

33-2-923. Attachment and garnishment of assets — prohibited pending proceedings. (1) During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets.

(2) Any lien obtained for any such action or proceeding within 4 months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

History: En. Sec. 585, Ch. 286, L. 1959; R.C.M. 1947, 40-5120.

33-2-924. Deposit of moneys collected. The moneys collected by the commissioner in a proceeding under this part shall be from time to time deposited in one or more state or national banks, savings banks, or trust companies. In the case of the insolvency or voluntary or involuntary liquidation of any such depositary which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund.

History: En. Sec. 587, Ch. 286, L. 1959; R.C.M. 1947, 40-5122.

33-2-925. Exemption from fees. The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this part, whether or not such paper or instrument be executed by the commissioner or his deputies, employees, or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner or with the subsequent conduct of such action or proceeding.

History: En. Sec. 588, Ch. 286, L. 1959; R.C.M. 1947, 40-5123.

33-2-926. Borrowing on pledge of assets. For the purpose of facilitating the rehabilitation, liquidation, conservation, or dissolution of an insurer pursuant to this part, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge, and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal, or mixed, of such insurer. The commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this section.

History: En. Sec. 589, Ch. 286, L. 1959; R.C.M. 1947, 40-5124.

33-2-927. Voidable transfers. (1) Any transfer of or lien upon the property of an insurer which is made or created within 4 months prior to the granting of an order to show cause under this part with the intent of giving to any creditor a preference or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such preference will occur shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as receiver in any proceeding under this part may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber, or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this part. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

History: En. Sec. 591, Ch. 286, L. 1959; R.C.M. 1947, 40-5126.

33-2-928. Date rights fixed on liquidation. The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of this part with respect to the rights of claimants holding contingent claims.

History: En. Sec. 590, Ch. 286, L. 1959; R.C.M. 1947, 40-5125.

33-2-929 and 33-2-930 reserved.

33-2-931. Claims of nonresidents against domestic insurers. (1) In a delinquency proceeding begun in this state against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either:

(a) be proved in this state; or

(b) if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state, as provided in 33-2-932 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

History: En. Sec. 581, Ch. 286, L. 1959; R.C.M. 1947, 40-5116.

33-2-932. Claims against foreign insurers. (1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in this state may either:

(a) be proved in the domiciliary state as provided by the law of that state; or

(b) if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered or certified mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within 30 days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered or certified mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

History: En. Sec. 582, Ch. 286, L. 1959; R.C.M. 1947, 40-5117.

33-2-933. Insolvency order — time to file claims. (1) If upon the entry of an order of liquidation under this part or at any time thereafter during liquidation proceedings the insurer shall not be clearly solvent, the court shall, upon hearing after such notice it deems proper, make and enter an order adjudging the insurer to be insolvent.

(2) After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer to file such claims with him, at a place and within the time specified in the notice, or that such claims shall be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and shall be not less than 6 months after the entry of the order of insolvency. The

notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

History: En. Sec. 595, Ch. 286, L. 1959; R.C.M. 1947, 40-5130.

33-2-934. Form of claim — notice — hearing. (1) All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant or someone authorized to act on his behalf and having knowledge of the facts and shall be supported by such documents as may be material thereto.

(2) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date of filing as specified in this part.

(3) Within 10 days of the receipt of any claim or within such further period as the court may, for good cause shown, fix, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(4) At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

History: En. Sec. 583, Ch. 286, L. 1959; R.C.M. 1947, 40-5118.

33-2-935. Priority of distribution. The priorities of distribution in a liquidation proceeding shall be in the following order:

(1) expenses of administration;

(2) compensation of employees as provided in 33-2-936;

(3) claims for taxes and debts due the federal or any state or local government which are secured by liens perfected prior to the commencement of delinquency proceedings;

(4) claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and liability claims against insurers which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, as well as claims presented by the Montana insurance guaranty association, the Montana life and guaranty association, or any similar organization in another state which represents covered claims as defined in 33-10-102(2) or contractual obligations as defined in 33-10-202;

(5) all other claims, including subrogation claims of other insurers.

History: En. Sec. 592, Ch. 286, L. 1959; amd. Sec. 1, Ch. 200, L. 1977; R.C.M. 1947, 40-5127(2).

33-2-936. Priority of claims for compensation. Compensation actually owing to employees other than officers of an insurer for services rendered within 3 months prior to the commencement of a proceeding against the insurer under this part, but not exceeding $500 for each employee, shall be paid prior to the payment of any other debt or claim and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced, except that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.

History: En. Sec. 592, Ch. 286, L. 1959; amd. Sec. 1, Ch. 200, L. 1977; R.C.M. 1947, 40-5127(1).

33-2-937. Priority of certain claims — preferred status — special deposit and secured claims. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this part or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

History: En. Sec. 584, Ch. 286, L. 1959; R.C.M. 1947, 40-5119.

33-2-938. Allowance of certain claims. (1) No contingent and unliquidated claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this part, except that such claim shall be considered, if properly presented, and may be allowed to share where:

(a) such claim becomes absolute against the insurer on or before the last day for filing claims against the assets of such insurer; or

(b) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(2) Where an insurer has been so adjudicated to be insolvent, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed:

(a) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured;

(b) if such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claim against such insurer arising out of his cause of action other than those already presented can be made; and

(c) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

(3) No judgment against such an insured taken after the date of entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

(4) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for determining rights and liabilities as provided in 33-2-928 unless the claimant shall surrender his security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

History: En. Sec. 594, Ch. 286, L. 1959; R.C.M. 1947, 40-5129.

33-2-939. Offsets. (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this part, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) below.

(2) No offset shall be allowed in favor of any such person where:

(a) the obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in 33-2-928, entitle him to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset; or

(c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer or against the subscribers of a reciprocal insurer or is to pay a balance upon the subscription to the capital stock of a stock insurer.

History: En. Sec. 593, Ch. 286, L. 1959; R.C.M. 1947, 40-5128.

33-2-940 through 33-2-944 reserved.

33-2-945. Report and petition for assessment. Within 3 years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the commissioner may make and file his report and petition to the court setting forth:

(1) the reasonable value of the assets of the insurer;

(2) the liabilities of the insurer to the extent thus far ascertained by the commissioner;

(3) the aggregate amount of the assessment, if any, which the commissioner deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments, and the costs and expenses of the delinquency proceedings in full;

(4) any other information relative to the affairs or property of the insurer that the commissioner deems material.

History: En. Sec. 596, Ch. 286, L. 1959; R.C.M. 1947, 40-5131.

33-2-946. Order and levy of assessment. (1) Upon the filing and reading of the report and petition provided for in 33-2-945, the court, ex parte, may order the commissioner to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the commissioner to assess each such member or subscriber for his proportion of the aggregate assessment according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.

(2) The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection (1) above if such amendment or supplement is filed within 3 years after the date of the entry of the order of rehabilitation or liquidation.

(3) After the entry of the order to levy and assess members or subscribers of an insurer referred to in (1) or (2) above, the commissioner shall levy and assess members or subscribers in accordance with the order.

(4) The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this part or pursuant to any other provision of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

(5) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code.

History: En. Sec. 597, Ch. 286, L. 1959; R.C.M. 1947, 40-5132.

33-2-947. Assessment prima facie correct — notice — payment — proceedings to collect. (1) Any assessment of a subscriber or member of an insurer made by the commissioner pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the commissioner under 33-2-946 shall be prima facie correct.

(2) Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any proceeding to collect the assessment.

(3) If any such member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the commissioner may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

(4) If the subscriber or member after due service of a copy of the order and petition referred to in (3) above is made upon him:

(a) fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or

(b) appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

(5) The commissioner may collect any such assessment through any other lawful means.

History: En. Sec. 598, Ch. 286, L. 1959; R.C.M. 1947, 40-5133.

33-2-948. Proposal for disbursement. (1) Within 120 days of a final determination of insolvency of a company by a court of competent jurisdiction, the receiver shall make application to the court for approval of a proposal to disburse assets out of such company's marshaled assets, from time to time as such assets become available, to the Montana insurance guaranty association, the Montana life and health guaranty association, or to any entity or person performing a similar function in another state. Such associations are herein referred to as the associations.

(2) Such proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors to the extent of the value of the security held and claims falling within the priorities established in subsections (1) through (4) of 33-2-935;

(b) disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available;

(c) equitable allocation of disbursements to each of the associations entitled thereto;

(d) the securing by the receiver from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the receiver, without interest, such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in subsections (1) through (4) of 33-2-935 in accordance with such priorities. No bond may be required of any such association.

(e) a full report to be made by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The receiver's proposal shall provide for disbursements to the associations in amounts estimated to be at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to the Montana life and health guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of part 2, chapter 10.

(5) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice is considered to have been given when deposited in the United States mail, certified and first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above-required notice has been given and provided further that the receiver's proposal complies with subsections (2)(a) and (2)(d).

History: En. 40-5134 by Sec. 2, Ch. 200, L. 1977; R.C.M. 1947, 40-5134.

Part 10

Stock Transfers — Holding Companies

33-2-1001. Definitions. Unless the context requires otherwise, the following definitions apply in this part:

(1) "Affiliate" means any company:

(a) 15% or more of whose voting stock is owned or controlled by an insurance holding company;

(b) the election of whose directors is controlled in any manner by an insurance holding company; or

(c) 15% or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(2) "Company" means all corporations, joint-stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(3) "Domestic insurer" means one formed under the laws of this state.

(4) "Foreign insurer" means one formed under the laws of any jurisdiction other than this state.

(5) "Insurance holding company" means any company:

(a) which directly or indirectly owns, controls, or holds with power to vote 15% or more of the voting stock of one or more insurance companies;

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, 15% or more of the voting stock of one or more insurance companies is held by one or more trustees; and

(d) for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and insurance holding company is such that the transaction effects no substantial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

History: En. Sec. 2, Ch. 269, L. 1967; R.C.M. 1947, 40-5502(part).

33-2-1002. Restrictions on transfers of stock. Except with prior written approval of the commissioner:

(1) no domestic insurance company shall, directly or indirectly, transfer 15% of its voting stock to a foreign or domestic insurance holding company;

(2) no domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, 15% or more of the voting stock of the company whose shares it acquires;

(3) no domestic insurance holding company shall, directly or indirectly, transfer more than 15% of its authorized and outstanding voting stock to any other corporation, association, partnership, or individual.

History: En. Sec. 3, Ch. 269, L. 1967; R.C.M. 1947, 40-5503.

33-2-1003. Exemptions from prohibitions on stock transfers. The prohibitions of 33-2-1002 shall not apply to:

(1) stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith, provided such stock shall be sold or otherwise disposed of within 2 years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) stock acquired as a consequence of a merger or consolidation of one insurance company with another or the conversion of one insurance company into another or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted or whose assets were the subject of the sale; or

(4) any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

History: En. Sec. 4, Ch. 269, L. 1967; R.C.M. 1947, 40-5504.

33-2-1004. Examination of foreign and domestic holding companies — annual reports. Every domestic insurance company, 15% of whose stock is held by a domestic or foreign insurance holding company, and every domestic insurance holding company as defined by this part shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each year, and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

History: En. Sec. 5, Ch. 269, L. 1967; R.C.M. 1947, 40-5505.

33-2-1005. Acquisition and transfer of stock — petition — hearings — appeal. (1) Any company or insurance holding company desiring to acquire or transfer stock as regulated by 33-2-1002 shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule shall require.

(2) Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders or policyholders or that competition among insurance companies will be unnecessarily affected, he shall deny such petition.

(3) Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark County, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

History: En. Sec. 6, Ch. 269, L. 1967; R.C.M. 1947, 40-5506.

33-2-1006. Violations — penalty. Any company which fails to comply with the provisions of this part shall be fined by the commissioner in an amount not to exceed $1,000, and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this part shall be revoked by the commissioner after a hearing held for that purpose.

History: En. Sec. 7, Ch. 269, L. 1967; R.C.M. 1947, 40-5507.

33-2-1007. Filing of false information — penalty. Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500 or by imprisonment in the county jail for not more than 6 months, or both.

History: En. Sec. 8, Ch. 269, L. 1967; R.C.M. 1947, 40-5508.

Part 11

Affiliation and Merger — Holding Company Systems

33-2-1101. Definitions. As used in this part, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(1) An "affiliate" of or person "affiliated" with a specific person is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

(2) The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 33-2-1112 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term "insurer" shall have the same meaning as set forth in 33-1-201, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert but shall not include any securities broker performing no more than the usual and customary broker's function.

(6) A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(8) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

History: En. Sec. 1, Ch. 64, L. 1971; R.C.M. 1947, 40-5509(part).

33-2-1102. Authorization of subsidiaries. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(7) rendering other services related to the operations of an insurance business, including but not limited to actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(8) ownership and management of assets which the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) financing of insurance premiums, agents, and other forms of consumer financing;

(11) any other business activity determined by the commissioner to be reasonable ancillary to an insurance business;

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(a).

33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of parts 10 and 11 of this chapter, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 5% of such insurer's assets or 50% of such insurer's surplus as regards policyholders, provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this [section]. The total investment of the insurer shall include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(e) invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in parts 10 and 11 of this chapter applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of parts 10 and 11 of this chapter and the insurer has notified the commissioner thereof.

History: En. Sec. 2, Ch. 64, L. 1971; R.C.M. 1947, 40-5510(b) thru (e).

33-2-1104. Acquisition of control of or merger with domestic insurer — filing requisites. (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer.

(2) No person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed. For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(3) The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (2) is to be effected (hereinafter called "acquiring party"):

(i) if such person is an individual, his principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subsection (i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence) and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (2) which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (2) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (2) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (2) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (2) during the 12 calendar months preceding the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) a description of any recommendations to purchase any security referred to in subsection (2) made during the 12 calendar months preceding the filing of the statement, by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (2) and (if distributed) of additional soliciting material relating thereto;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (2) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) such additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(4) If the person required to file the statement referred to in subsection (2) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (3) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (2) is a corporation, the commissioner may require that the information called for by subsection (3) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(5) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within 2 business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(6) If any offer, request, invitation, agreement, or acquisition referred to in subsection (2) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (2) may utilize such documents in furnishing the information called for by that statement.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(a) thru (c).

33-2-1105. Approval by commissioner — hearings — notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(2) unless, after a public hearing thereon, he finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(2) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(2) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) shall be held within 30 days after the statement required by 33-2-1104(2) is filed, and at least 20 days notice

thereof shall be given by the commissioner to the person filing the statement. Not less than 7 days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The insurer shall give such notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to subsections (2) through (5) of 33-2-1104 and all notices of public hearings held pursuant to subsection (1) shall be mailed by the insurer to its shareholders within 5 business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(d), (e).

33-2-1106. Exemptions — violations — jurisdiction. (1) The provisions of 33-2-1104, 33-2-1105, and this section shall not apply to:

(a) any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsections (1) and (2) of 33-2-1104 of any voting security referred to in subsections (1) and (2) of 33-2-1104 which, immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding;

(b) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:

(i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(ii) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following shall be violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (2) through (5) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving such person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

History: En. Sec. 3, Ch. 64, L. 1971; R.C.M. 1947, 40-5511(f) thru (h).

33-2-1107 through 33-2-1110 reserved.

33-2-1111. Registration of insurers — requisites — termination. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 60 days after July 1, 1971, or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(d) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(3) No information need be disclosed on the registration statement filed pursuant to subsection (2) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving ½ of 1% or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition; provided, however, that subject to 33-2-1114, each registered insurer shall so report all dividends and other distributions to shareholders within 2 business days following the declaration thereof.

(5) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(6) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(7) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(a) thru (g).

33-2-1112. Exemptions — disclaimer — violations. (1) The provisions of 33-2-1111 and this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of 33-2-1111 and this section.

(2) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under 33-2-1111 and this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(3) The failure to file a registration statement or any amendment thereto required by 33-2-1111 and this section within the time specified for such filing shall be a violation of 33-2-1111 and this section.

History: En. Sec. 4, Ch. 64, L. 1971; R.C.M. 1947, 40-5512(h) thru (j).

33-2-1113. Transactions with affiliates — standards. (1) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(a) The terms shall be fair and reasonable.

(b) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(c) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

History: En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(a), (b).

33-2-1114. Dividends and other distributions — commissioner approval. (1) No insurer subject to registration under 33-2-1111 and 33-2-1112 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or the commissioner shall have approved such payment within such 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of such insurer's surplus as regards policyholders as of December 31 next preceding or the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the 12-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the 30-day period referred to above.

History: En. Sec. 5, Ch. 64, L. 1971; R.C.M. 1947, 40-5513(c).

33-2-1115. Examination. (1) Subject to the limitation contained in this section and in addition to the powers which the commissioner has under chapter 1, part 4, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under 33-2-1111 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

(2) The commissioner shall exercise his power under subsection (1) only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) shall be liable for and shall pay the expense of such examination.

History: En. Sec. 6, Ch. 64, L. 1971; R.C.M. 1947, 40-5514.

33-2-1116. Confidentiality of information. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

History: En. Sec. 7, Ch. 64, L. 1971; R.C.M. 1947, 40-5515.

33-2-1117. Rules. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this part.

History: En. Sec. 8, Ch. 64, L. 1971; R.C.M. 1947, 40-5516.

33-2-1118. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this part or of any rule or order issued by the commissioner hereunder, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court for Lewis and Clark County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this part or any such rule or order and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(a).

33-2-1119. Voting of securities — prohibition — injunction — sequestration. (1) No security which is the subject of any agreement or arrangement regarding acquisition or which is acquired or to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder may be voted at any shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.

(2) If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this part or of any rule or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the district court for Lewis and Clark County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of 33-2-1113 or any rule or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this part or any rule or order issued by the commissioner hereunder, the district court for Lewis and Clark County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this part. Notwithstanding any other

provisions of law, for the purposes of this part the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

History: En. Sec. 9, Ch. 64, L. 1971; R.C.M. 1947, 40-5517(b), (c).

33-2-1120. Criminal proceedings — penalty. (1) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or agent thereof.

(2) Any insurer which willfully violates this part may be fined not more than $5,000.

(3) Any individual who willfully violates this part may be fined not more than $500 or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both.

History: En. Sec. 10, Ch. 64, L. 1971; R.C.M. 1947, 40-5518.

33-2-1121. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this part which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed to take possession of the property of such domestic insurer and to conduct the business thereof.

History: En. Sec. 11, Ch. 64, L. 1971; R.C.M. 1947, 40-5519.

33-2-1122. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this part which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

History: En. Sec. 12, Ch. 64, L. 1971; R.C.M. 1947, 40-5520.

33-2-1123. Judicial review — mandamus. (1) Any person aggrieved by any act, determination, rule, or order or any other action of the commissioner pursuant to this part may appeal therefrom to the district court for Lewis and Clark County. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(2) The filing of an appeal pursuant to this section shall stay the application of any such rule, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this part may petition the district court for Lewis and Clark County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

History: En. Sec. 13, Ch. 64, L. 1971; R.C.M. 1947, 40-5521.

33-2-1124. Conflict with other laws. All laws and parts of laws of this state inconsistent with this part are hereby superseded with respect to matters covered by this part.

History: En. Sec. 14, Ch. 64, L. 1971; R.C.M. 1947, 40-5522.

Part 12

Limit of Risk — Reinsurance

33-2-1201. Limit of risk. (1) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of such other hazard insured against.

(3) Reinsurance ceded as authorized by 33-2-1205 shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law and shall be determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section shall not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employer's liability coverages, sprinklered risks, or any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

History: En. Sec. 80, Ch. 286, L. 1959; R.C.M. 1947, 40-2909.

33-2-1202 through 33-2-1204 reserved.

33-2-1205. Reinsurance — limitations — credit as asset. (1) An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) An insurer may reinsure all or part of any particular risk with any solvent insurer authorized to transact insurance in one or more states and having surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

(3) No credit shall be allowed to an insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance and is either authorized to transact insurance in at least one state of the United States or has an attorney-in-fact resident in the United States upon whom service of legal process may be made.

(4) Credit shall be allowed as an asset or as a deduction from liability to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under the foregoing provisions of this section, except that no such credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(5) Upon request of the commissioner, an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(6) This section shall not apply to wet marine and transportation insurance.

History: En. Sec. 81, Ch. 286, L. 1959; R.C.M. 1947, 40-2910.

33-2-1206. Bulk reinsurance — foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve the agreement within a reasonable time after such a hearing unless he finds that it would substantially reduce the protection or service to the policyholders.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval.

History: En. 40-2911 by Sec. 1, Ch. 303, L. 1977; R.C.M. 1947, 40-2911.

33-2-1207. Interest in reinsurance. The original insured has no interest in a contract of reinsurance.

History: En. Sec. 280, Ch. 286, L. 1959; R.C.M. 1947, 40-3723.

33-2-1208 through 33-2-1210 reserved.

33-2-1211. Bulk reinsurance — stock insurers. (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof with another insurer by an agreement of bulk reinsurance, but no such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after such filing unless he finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, he shall so notify the insurer in writing specifying his reasons therefor.

History: En. Sec. 464, Ch. 286, L. 1959; R.C.M. 1947, 40-4747.

33-2-1212. Bulk reinsurance — mutual insurers. (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve such agreement within a reasonable time after filing if he finds it to be fair and equitable to each domestic insurer involved and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not so approve, he shall so notify each insurer involved in writing specifying his reasons therefor.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the commissioner may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto as upon conversion of such insurer, pursuant to 33-3-216, of his equity in the business reinsured as determined under a fair formula approved by the commissioner, which equity shall be based upon such member's equity in the reserves, assets (whether or not "admitted" assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

History: En. Sec. 465, Ch. 286, L. 1959; R.C.M. 1947, 40-4748.

CHAPTER 3

DOMESTIC STOCK AND MUTUAL INSURERS

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Part 5 — Insurance Operations

33-3-501. Additional kinds of insurance — mutuals.
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33-3-503. Membership in mutuals.

Part 1

General Provisions

33-3-101. Scope of chapter. This chapter shall apply only to domestic stock insurers and domestic mutual insurers transacting or proposing to transact insurance on the cash premium or legal reserve plan, except that 33-3-414(2) and 33-3-503 shall also apply to foreign and alien insurers.

History: En. Sec. 418, Ch. 286, L. 1959; R.C.M. 1947, 40-4701.

33-3-102. Definitions. (1) A domestic stock insurer is an incorporated insurer with capital divided into shares and owned by its stockholders.

(2) A domestic mutual insurer is an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.

History: En. Secs. 419, 420, Ch. 286, L. 1959; R.C.M. 1947, 40-4702, 40-4703.

33-3-103. Applicability of general corporation statutes. The applicable laws of this state as to domestic corporations formed for profit shall apply as to domestic stock insurers and domestic mutual insurers except where in conflict with the express provisions of this code and the reasonable implications of such provisions.

History: En. Sec. 421, Ch. 286, L. 1959; R.C.M. 1947, 40-4704.

Part 2

Formation

33-3-201. Incorporation. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of such individuals may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States. At least a majority of the incorporators shall be residents of this state.

(3) The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their execution thereof in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation shall state the purpose for which the corporation is formed and shall show:

(a) the name of the corporation. If a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock into which divided, the par value of each such share, which par value shall be at least $1. Shares without par value or other than one class of voting common stock shall not be authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, or bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be stated in the articles of incorporation but shall not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who shall constitute the board of directors and conduct the affairs of the corporation; also, the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.

History: En. Sec. 422, Ch. 286, L. 1959; amd. Sec. 7, Ch. 423, L. 1971; amd. Sec. 18, Ch. 100, L. 1973; R.C.M. 1947, 40-4705.

33-3-202. Articles of incorporation — filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the quadruplicate originals of the articles of incorporation to the commissioner together with the filing fees therefor specified in 33-2-708. The commissioner shall submit the quadruplicate originals of the proposed articles of incorporation to the attorney general for examination. If the attorney general finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, he shall so certify and return such certificate and all sets of the articles to the commissioner.

(2) When the articles of incorporation have been approved by the attorney general, the commissioner shall also endorse his approval upon each set of the articles, except that if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, he shall refuse to approve the articles of incorporation and shall return them to the proposed incorporators together with a written statement of the reasons for such refusal. If approved by him, the commissioner shall then forward the articles of incorporation with his approval endorsed thereon, together with the certificate of the attorney general, to the incorporators. The incorporators shall forthwith file one set of the articles of incorporation with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county wherein is to be located the corporation's principal place of business, and the remaining set of articles and the certificate of the attorney general shall be made a part of the corporation's record.

(3) If the attorney general finds that the proposed articles of incorporation do not comply with law, he shall refuse to approve the same and shall return the quadruplicate sets thereof to the commissioner, together with a written statement of the reasons for his refusal to approve. The commissioner shall return all sets of the proposed articles of incorporation to the proposed incorporators together with the written statement of the attorney general.

(4) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the secretary of state and the completion of the filings referred to in subsection (2) above, but it shall not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this code.

(5) A copy of the certificate of incorporation, duly certified by the secretary of state, shall be admissible in all the courts of this state as prima facie evidence of due incorporation.

History: En. Sec. 423, Ch. 286, L. 1959; R.C.M. 1947, 40-4706.

33-3-203. Amendment of articles of incorporation — grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of such a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included due notice of the proposal to amend.

(2) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(3) Upon adoption of such an amendment the insurer shall make in quadruplicate under its corporate seal a certificate (sometimes referred to as "articles of amendment") setting forth such amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate, together with the filing fee specified therefor in 33-2-708. If he finds that the certificate and amendments comply with law, the commissioner shall endorse his approval upon each of the quadruplicate originals and return them to the insurer. The insurer shall forthwith file one set of such endorsed articles of amendment with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county in which is located the insurer's principal place of business, and retain the remaining set in the corporate records. The amendment shall be effective when such filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, he shall not approve the same and shall return the quadruplicate certificate of amendment to the insurer together with his written statement of reasons for nonapproval. The filing fee shall not be returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount thereof then outstanding, the commissioner shall not approve the amendment if he has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by such reduction. If any such reduction of capital stock is effectuated, the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for such number of shares as such stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of such reduction.

History: En. Sec. 424, Ch. 286, L. 1959; R.C.M. 1947, 40-4707.

33-3-204. Initial qualifications — domestic mutuals. (1) When newly organized, a domestic mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection (2) of this section.

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than that usually charged by stock insurers for comparable coverages, must have surplus funds on hand and deposited as of the date such insurance coverages are to become effective, or, in lieu of such applications, premiums, and surplus, may deposit surplus, all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

(a) Kind of insurance	(b) Minimum No. of applicants accepted	(c) Minimum No. of subjects covered	(d) Minimum premium collected	(e) Minimum amount of insurance each subject	(f) Maximum amount of insurance each subject (v)	(g) Minimum surplus funds deposited (vi)	(h) Deposit of surplus in lieu of (vi)
Life (i)	500	500	annual	$1,000	$ 2,500	$ 50,000	$100,000
Disability (ii)	500	500	quarterly	$ 10 (weekly indem.)	$ 25 (weekly indem.)	$ 50,000	$100,000
Property (iii)	100	250	annual	$1,000	$ 3,000	$100,000	$200,000
Casualty (iv)	250	500	annual	$1,000	$10,000	$150,000	$200,000
With workmen's compensation	250	1,500	quarterly	$1,000	$10,000	$200,000	$300,000

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like Roman numerals appearing in such schedule:

(i) No group insurance or term policies for terms of less than 10 years shall be included.

(ii) No group, blanket, or family plans of insurance shall be included. In lieu of weekly indemnity a like premium value in medical, surgical, and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed $2,500.

(iii) Only insurance of the owner's interest in real property may be included.

(iv) Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

(v) The maximums provided for in this column (f) are net of applicable reinsurance.

(vi) The deposit of surplus in the amount specified in columns (g) and (h) must thereafter be maintained unimpaired. The deposit is subject to the provisions of chapter 2, part 6, of this title.

History: En. Sec. 425, Ch. 286, L. 1959; R.C.M. 1947, 40-4708.

33-3-205. Formation of mutual insurer — bond. (1) Before soliciting any applications for insurance required under 33-3-204 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of $15,000, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) for the prompt return to applicant members of all premiums collected in advance;

(b) for payment of all indebtedness of the corporation; and

(c) for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation, all in the event the corporation fails to complete its organization and secure a certificate of authority within 1 year after the date of its certificate of incorporation.

(2) In lieu of such bond, the incorporators may deposit with the commissioner $15,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than $15,000, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.

History: En. Sec. 426, Ch. 286, L. 1959; R.C.M. 1947, 40-4709.

33-3-206. Applications for insurance in formation of mutual insurer. (1) Upon receipt of the commissioner's approval of the bond or deposit as provided in 33-3-205, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located, or to be performed in this state.

(3) All such applications shall provide that:

(a) issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) no insurance is in effect unless and until the certificate of authority has been issued; and

(c) the prepaid premium or deposit and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than 1 year after the date of the certificate of incorporation.

(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applicants for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subsection(3)(c) above to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under chapter 17.

History: En. Sec. 427, Ch. 286, L. 1959; R.C.M. 1947, 40-4710.

33-3-207. Formation of mutuals — trust deposit of premiums — issuance of policies. (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with 33-3-206(3)(c). The corporation shall file an executed copy of such trust agreement with the commissioner.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

History: En. Sec. 428, Ch. 286, L. 1959; R.C.M. 1947, 40-4711.

33-3-208. Formation of mutuals — failure to qualify. If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within 1 year after the date of its certificate of incorporation, its corporate powers shall cease and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under 33-3-207.

History: En. Sec. 429, Ch. 286, L. 1959; R.C.M. 1947, 40-4712.

33-3-209 through 33-3-214 reserved.

33-3-215. Mutualization of stock insurer. (1) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan, procedure, or mutualization unless:

(a) it is equitable to stockholders and policyholders;

(b) it is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy, or by mail pursuant to such notice and procedure as may be approved by the commissioner;

(c) if a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies and whose policies have been in force for more than 1 year;

(d) mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) the plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by [15-1905, R.C.M. 1947], as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) the plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) the mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 2, part 9.

History: En. Sec. 460, Ch. 286, L. 1959; R.C.M. 1947, 40-4743.

33-3-216. Converting mutual insurer to stock insurer. (1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the commissioner after a hearing thereon.

(2) The commissioner shall not approve any such plan or procedure unless:

(a) it is equitable to the insurer's members;

(b) it is subject to approval by vote of not less than three-fourths of the insurer's current members voting thereon in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the commissioner. If a life insurer, right to vote may be limited to members who hold policies other than term or group policies and whose policies have been in force for not less than 1 year.

(c) the equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which such equity shall be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) the policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date such plan was submitted to the commissioner;

(e) the plan gives to each policyholder of the insurer, as specified in subsection (d) above, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under subsection (c) above;

(f) shares are so offered to policyholders at a price not greater than to be thereafter offered to others but at not more than double the par value of such shares;

(g) the plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled of cash in the amount of not less than 50% of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of such mutual insurer; and

(h) the plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of such required capital.

History: En. Sec. 461, Ch. 286, L. 1959; R.C.M. 1947, 40-4744.

33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state and by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) below.

(2) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) is contrary to law;

(b) inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, agent, or employee of any insurer party to such merger or consolidation shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or ageement.

(4) If the commissioner does not approve any such plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance also in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other such states in which such insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) above, with full right to examine all witnesses and evidence and to offer to the commissioner such pertinent information and suggestions as they may deem proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall therby automatically be extinguished and nullified.

History: (1) thru (6)En. Sec. 462, Ch. 286, L. 1959; amd. Sec. 1, Ch. 151, L. 1971; Sec. 40-4745, R.C.M. 1947; (7)En. Sec. 467, Ch. 286, L. 1959; Sec. 40-4750, R.C.M. 1947; R.C.M. 1947, 40-4745, 40-4750(4).

33-3-218. Mergers and consolidations of mutual insurers. (1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer involved voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the commissioner. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved by him in writing after a hearing thereon. The commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(a) inequitable to the policyholders of any domestic insurer involved; or

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve such plan or agreement he shall so notify the insurers in writing specifying his reasons therefor.

(6) Section 33-3-217(5) shall also apply as to mergers and consolidations of such mutual insurers.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of such merged or consolidated domestic insurer shall thereby automatically be extinguished and nullified.

History: En. Secs. 463, 467, Ch. 286, L. 1959; R.C.M. 1947, 40-4746, 40-4750(4).

Part 3

Management

33-3-301. Bylaws of mutual. (1) A domestic mutual insurer shall have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify, and revoke bylaws.

(2) The bylaws shall provide:

(a) that each member is entitled to one vote upon each matter coming to a vote at meetings of members; or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, number of policies held or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time.

(b) for election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(c) the time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date, and time to be set forth in the policy and without giving other notice of such meeting.

(d) the number, designation, election, terms, and powers and duties of the respective corporate officers;

(e) for deposit, custody, disbursement, and accounting as to corporate funds;

(f) for any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(3) No provision in the bylaws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the commissioner. This subsection shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

History: En. Sec. 432, Ch. 286, L. 1959; R.C.M. 1947, 40-4715.

33-3-302. Bylaws of stock insurer — modification. Any bylaw so adopted at any meeting of stockholders of a domestic insurer shall not be modified or revoked except by the stockholders at a subsequent meeting unless the bylaws as adopted or amended by the stockholders grant authority to the board of directors to revoke or modify bylaw provisions; but the board of directors shall not so revoke or modify any bylaw relating to the qualifications, election, terms, or compensation of directors or to the calling or notice of meetings of stockholders. Any revocation or modification of bylaws made by the directors under this provision shall be presented at the next following meeting of stockholders for the information of the stockholders.

History: En. Sec. 433, Ch. 286, L. 1959; R.C.M. 1947, 40-4716.

33-3-303. Meetings of stockholders or members. (1) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state.

(2) No meeting of stockholders or members shall amend the insurer's articles of incorporation unless the proposal so to amend was included in the notice of the meeting.

(3) Each insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs, and transact such other business as may properly be brought before it. Not less than 20 days' notice shall be given of such meeting in the manner provided in the bylaws, except where notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice as provided in the bylaws. The notice shall state the purpose of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

(5) If more than 15 months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call such a meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it shall be the duty of the secretary to call a special meeting of stockholders or members to be held at such time as the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue such call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held can be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members shall constitute a quorum;

(b) the stockholders or members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

(c) if any necessary officer fails to attend such meeting, any stockholder or member present may be elected to act temporarily in lieu of any such absent officer;

(d) if a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting to such time as they may determine, but in the case of any meeting called for the election of any director the adjournment must be to the next day and those who attend the second of such adjourned meetings, although less than a quorum as fixed in this section or in the articles of incorporation, shall nevertheless constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given.

History: En. Sec. 434, Ch. 286, L. 1959; R.C.M. 1947, 40-4717.

33-3-304. Proxies — corrupt practices — penalty. (1) Every proxy of a stockholder of an insurer, unless coupled with an interest, shall be revocable at will and this provision cannot be waived. The validity of every unrevoked proxy shall cease 11 months after the date of its execution unless some other definite period of validity is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after 3 years from the date of its execution.

(2) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

(3) No person shall buy or sell or barter a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall be punishable as provided in 33-1-104.

History: En. Secs. 435, 436, Ch. 286, L. 1959; R.C.M. 1947, 40-4718, 40-4719.

33-3-305. Directors — number and election. (1) The affairs of every domestic insurer shall be managed by the number of directors fixed in the insurer's bylaws, which shall not be less than 5 or more than 21 directors.

(2) Directors must be elected from and by the members or stockholders of a domestic insurer, except as provided in 33-3-306, at such time and place and for such terms, not exceeding 3 years, as may be provided in the insurer's bylaws.

(3) The term of a director shall extend until his successor has been elected and has qualified.

History: En. Sec. 437, Ch. 286, L. 1959; R.C.M. 1947, 40-4720.

33-3-306. Participation of policyholders in election of directors of stock insurer. The bylaws of a domestic stock life insurer may provide a plan for its policyholders to participate with stockholders in the election of its directors.

History: En. Sec. 438, Ch. 286, L. 1959; R.C.M. 1947, 40-4721.

33-3-307. Bond of officers. (1) The president, secretary, and treasurer of every mutual insurer shall each file with the commissioner and thereafter maintain in force so long as he is such an officer a fidelity bond in the sum of $10,000 issued by an authorized corporate surety in favor of the insurer. In lieu of individual bonds, all such officers may be covered under a blanket bond for the same respective amounts, and which blanket bond shall likewise be filed with the commissioner.

(2) The premium for the bond shall be payable by the insurer.

(3) No such bond shall be subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than 30 days in advance of the effective date of such cancellation.

(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer.

(5) This section shall not be deemed to limit the amount of bonded protection which the insurer may carry as to any officer.

History: En. Sec. 439, Ch. 286, L. 1959; R.C.M. 1947, 40-4722.

33-3-308. Prohibited pecuniary interest of officials. (1) Any officer or director or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds shall not deposit or invest such funds except in the insurer's corporate name; shall not borrow the funds of such insurer; shall not be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of such insurer except as a stockholder or member; shall not take or receive to his own use any fee, brokerage, commission, gift, or other consideration for or on account of any such transaction made by or on behalf of such insurer.

(2) No insurer shall guarantee any financial obligation of any of its officers or directors.

(3) This section shall not prohibit such a director or officer or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights so provided for its policyholders.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer or to a corporation or firm in which a director is interested for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

History: En. Sec. 440, Ch. 286, L. 1959; R.C.M. 1947, 40-4723.

33-3-309. Management and exclusive agency contracts. (1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) The commissioner shall disapprove any such contract if he finds that it:

(a) subjects the insurer to excessive charges;

(b) is to extend for an unreasonable length of time;

(c) does not contain fair and adequate standards of performance; or

(d) contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

History: En. Sec. 441, Ch. 286, L. 1959; R.C.M. 1947, 40-4724.

33-3-310. Agreement not to sell property prohibited. No insurer shall enter into any agreement to withhold from sale any of its property. Disposition of an insurer's property shall be at all times within the control of its board of directors.

History: En. Sec. 444, Ch. 286, L. 1959; R.C.M. 1947, 40-4727.

Part 4

Finance

33-3-401. Home office and records — penalty for unlawful removal of records or assets. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state; and

(b) such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) below.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal or concealment of such records or assets or material part thereof from the commissioner is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state or who conceals or attempts to conceal the same from the commissioner, in violation of this subsection, shall upon conviction thereof be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 9.

(4) This section shall not be deemed to prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

History: En. Sec. 442, Ch. 286, L. 1959; R.C.M. 1947, 40-4725.

33-3-402. Vouchers for expenditures. (1) No insurer shall make any disbursement of $100 or more unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein.

(4) If a voucher cannot be obtained, the expenditure referred to in subsection (1) above shall be evidenced by an affidavit in which is set forth the character and object of the expenditure and the reasons for not obtaining a voucher therefor.

History: En. Sec. 443, Ch. 286, L. 1959; R.C.M. 1947, 40-4726.

33-3-403 through 33-3-410 reserved.

33-3-411. Contingent liability of mutual members. (1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's articles of incorporation.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

History: En. Sec. 446, Ch. 286, L. 1959; R.C.M. 1947, 40-4729.

33-3-412. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for authority to transact the kinds of insurance being transacted and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5% of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment shall be computed on the basis of the premiums earned on such policy during the period to which the assessment relates.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

History: En. Sec. 447, Ch. 286, L. 1959; R.C.M. 1947, 40-4730.

33-3-413. Enforcement of contingent liability. (1) Any assessment made by an insurer under 33-3-412 or 33-3-433 shall be deemed to be prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer shall be deemed to be likewise prima facie correct.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

History: En. Sec. 448, Ch. 286, L. 1959; R.C.M. 1947, 40-4731.

33-3-414. Nonassessable policies of mutual insurers. (1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued.

(2) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

(3) No policy of a domestic mutual insurer which, pursuant to the commissioner's order, is without contingent liability and thereby nonassessable by its terms shall be subject to assessment for any debt or liability of the insurer.

History: En. Sec. 449, Ch. 286, L. 1959; R.C.M. 1947, 40-4732.

33-3-415. Insufficient reserves — nonassessable policies prohibited — revocation of authority. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder or renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability.

History: En. Sec. 450, Ch. 286, L. 1959; R.C.M. 1947, 40-4733.

33-3-416 through 33-3-420 reserved.

33-3-421. Participating policies. (1) If provided in its articles of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged. Any such domestic insurer which prior to January 1, 1961, has been issuing all or part of its policies on a participating basis without specific authorization in its articles of incorporation may continue to issue such policies on a basis not inconsistent with this section.

(2) After the third policy year no dividend otherwise earned shall be made contingent upon the payment of renewal premium on any policy.

History: En. Sec. 451, Ch. 286, L. 1959; R.C.M. 1947, 40-4734.

33-3-422. Dividends to stockholders. (1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under 33-3-431.

(3) A dividend otherwise proper may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

History: En. Sec. 452, Ch. 286, L. 1959; R.C.M. 1947, 40-4735.

33-3-423. Dividends to mutual policyholders. (1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

History: En. Sec. 453, Ch. 286, L. 1959; R.C.M. 1947, 40-4736.

33-3-424. Illegal dividends — penalty. (1) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under 33-3-422 or 33-3-423 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by the insurer.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

History: En. Sec. 454, Ch. 286, L. 1959; R.C.M. 1947, 40-4737.

33-3-425 through 33-3-430 reserved.

33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 6% per annum, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan to a mutual insurer shall be subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such loan shall be made by a mutual insurer unless in advance approved by the commissioner.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets.

History: En. Sec. 455, Ch. 286, L. 1959; R.C.M. 1947, 40-4738.

33-3-432. Impairment of capital or assets. (1) If a stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under 33-3-204 or 33-3-501 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under chapter 2, part 8, for the investment of the insurer's funds; if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient surplus under this code.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such 60-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 2, part 9; except that if such deficiency exists because of increased loss reserves required by the commissioner or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, in his discretion and upon application and good cause shown, extend for not more than an additional 60 days the period within which such deficiency may be so made good and such proof thereof so filed.

History: En. Sec. 456, Ch. 286, L. 1959; R.C.M. 1947, 40-4739.

33-3-433. Assessment of stockholders or members. (1) Any insurer receiving the commissioner's notice mentioned in 33-3-432 (1):

(a) if a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of amount of impairment under 33-3-432, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

(b) if a mutual insurer, shall levy such an assessment upon members as is provided for under 33-3-412.

(2) Neither this section nor 33-3-432 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

History: En. Sec. 457, Ch. 286, L. 1959; R.C.M. 1947, 40-4740.

33-3-434. Directors' liability for losses during deficiency. The directors of the insurer shall be individually liable as to losses incurred under policies issued by the insurer after expiration of the period provided in 33-3-432 for curing any deficiency of the insurer's capital stock or surplus and prior to the curing of the deficiency.

History: En. Sec. 458, Ch. 286, L. 1959; R.C.M. 1947, 40-4741.

33-3-435. Stock transfer during impairment of capital. Any transfer of the stock of a domestic insurer made during the existence of any impairment of such insurer's capital does not release the stockholder making the transfer from any liability as a stockholder of such insurer which accrued prior to such transfer.

History: En. Sec. 459, Ch. 286, L. 1959; R.C.M. 1947, 40-4742.

33-3-436. Mutual member's share of assets on liquidation. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration shall be distributed to existing persons who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered or date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

History: En. Sec. 466, Ch. 286, L. 1959; R.C.M. 1947, 40-4749.

33-3-437 through 33-3-440 reserved.

33-3-441. Equity securities of domestic stock insurance company — statement of ownership. (1) When used in 33-3-441 through 33-3-447, the term "equity security" means any stock or similar security; any security convertible, with or without consideration, into such a security or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter.

(3) If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Secs. 1, 6, Ch. 159, L. 1965; R.C.M. 1947, 40-4751, 40-4756.

33-3-442. Inside trading of securities — profit inures to company — limitation of action to recover — rules. (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months.

(2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than 2 years after the date such profit was realized.

(3) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved or any transaction or transactions which the commissioner by rules may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965; R.C.M. 1947, 40-4752.

33-3-443. Short sales of equity securities prohibited — time for delivery after sale. (1) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

(a) does not own the security sold; or

(b) if owning the security, does not deliver it against such sale within 20 days thereafter or does not within 5 days after such sale deposit it in the mails or other usual channels of transportation.

(2) No person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965; R.C.M. 1947, 40-4753.

33-3-444. Exemptions — securities held in an investment account — primary or secondary market — rules. (1) The provisions of 33-3-442 shall not apply to any purchase and sale, or sale and purchase, and the provisions of 33-3-443 shall not apply to any sale of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.

(2) The commissioner may, by such rules as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965; R.C.M. 1947, 40-4754.

33-3-445. Exemptions — arbitrage transactions. The provisions of 33-3-441 through 33-3-443 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner may adopt in order to carry out the purposes of 33-3-441 through 33-3-447.

History: En. Sec. 5, Ch. 159, L. 1965; R.C.M. 1947, 40-4755.

33-3-446. Exemptions — registered securities — holding by less than 100 persons. The provisions of 33-3-441 through 33-3-443 shall not apply to equity securities of a domestic stock insurance company if:

(1) such securities shall be registered or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or

(2) such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of 33-3-441 through 33-3-443 except for the provisions of this subsection (2).

History: En. Sec. 7, Ch. 159, L. 1965; R.C.M. 1947, 40-4757.

33-3-447. Rules of commissioner — classifications — effect. (1) The commissioner may make such rules as may be necessary for the execution of the functions vested in him by 33-3-441 through 33-3-446 and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction.

(2) No provision of 33-3-441 through 33-3-443 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965; R.C.M. 1947, 40-4758.

Part 5

Insurance Operations

33-3-501. Additional kinds of insurance — mutuals. A domestic mutual insurer, after being authorized to transact one kind of insurance, may be authorized by the commissioner to transact such additional kinds of insurance as are permitted under 33-2-108, while otherwise in compliance with this code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further to the additional expendable surplus requirements of 33-2-110 applicable to such a stock insurer.

History: En. Sec. 430, Ch. 286, L. 1959; R.C.M. 1947, 40-4713.

33-3-502. Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publication and radio, television, and other broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the

insurer is then licensed. It shall not prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A reciprocating state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section.

History: En. Sec. 445, Ch. 286, L. 1959; R.C.M. 1947, 40-4728.

33-3-503. Membership in mutuals. (1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee, or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of such membership and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

(3) Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

History: En. Sec. 431, Ch. 286, L. 1959; R.C.M. 1947, 40-4714.

CHAPTER 4

FARM MUTUAL INSURERS

Part 1 — General Provisions

Section
33-4-101. Scope of chapter — provisions applicable.
33-4-102. Definitions.
33-4-103. Corporate powers in general.

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Part 1

General Provisions

33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings heretofore formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517, and all amendments thereto, of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers heretofore formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625, and all amendments thereto, of the Revised Codes of Montana, 1947;

(c) all insurers hereafter formed under this chapter.

(2) All such insurers may be referred to as "farm mutual insurers".

(3) Nothing in the insurance laws of this state shall be deemed to apply to or govern either directly or indirectly domestic farm mutual insurers except as contained or referred to in this chapter.

(4) The following chapters and sections of this title also shall apply to farm mutual insurers to the extent so applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of such express provisions: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, part 9; 33-2-1212; 33-3-218; 33-3-308; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18.

History: En. Secs. 468, 520, Ch. 286, L. 1959; R.C.M. 1947, 40-4801, 40-4853.

33-4-102. Definitions. (1) A "county" mutual insurer is an insurer authorized to insure only property located in the county wherein is located its principal office and in the counties in this state with boundaries contiguous with such principal office county.

(2) A "state" mutual insurer is an insurer authorized to insure property throughout the state.

(3) "Surplus" is the extent to which the value of an insurer's assets exceeds its liabilities.

History: En. Secs. 469, 481, Ch. 286, L. 1959; R.C.M. 1947, 40-4802, 40-4814.

33-4-103. Corporate powers in general. (1) An insurance corporation formed under this chapter or existing on January 1, 1961, and of a type which might be formed under this chapter shall have the same capacity to act possessed by individuals but with authority to perform only such lawful acts as are necessary or proper to accomplish its purposes.

(2) Without affecting the authority contained in subsection (1) above, every such corporation shall have the following corporate powers:

(a) to have succession by its corporate name for the period stated in its articles;

(b) to sue and be sued in its corporate name;

(c) to adopt, use, and alter a corporate seal;

(d) to acquire, hold, sell, use, dispose of, pledge, or mortgage any such property as its purpose may require, subject to any limitation prescribed by law or the articles of incorporation;

(e) to transact insurance;

(f) to conduct its affairs through its directors, officers, employees, agents, and representatives thereunto duly authorized;

(g) to make bylaws not inconsistent with law for the exercise of its corporate powers, the management, regulation, and government of its affairs and property, including but not limited to calling and holding of meetings of its directors or members, and to modify or amend such bylaws;

(h) to exercise, subject to law and the express provisions of the articles of incorporation, all such incidental and subsidiary powers as may be necessary or convenient to the attainment of the objectives set forth in such articles;

(i) to dissolve and wind up or be dissolved and wound up in the manner provided by law.

History: En. Sec. 479, Ch. 286, L. 1959; R.C.M. 1947, 40-4812.

Part 2

Formation

33-4-201. Eligible incorporators. (1) One hundred or more individuals residing in this state, each of whom is 18 years of age or more, who collectively own farm property as referred to in 33-4-501(1)(a) valued at not less than $500,000 which they desire to insure, and each of whom owns farm lands or ranch lands situated in this state valued at not less than $5,000, may incorporate a state mutual insurer.

(2) Twenty-five or more individuals residing in this state, each of whom is 18 years or more of age, each of whom owns farm land or ranch land valued at $5,000 or more in the county wherein is to be located the principal office of the proposed insurer or in any county in this state contiguous with such county, and who collectively own in such counties farm property referred to in 33-4-501(1)(a) valued at not less than $125,000 which they desire to insure, may incorporate a county mutual insurer.

History: En. Sec. 474, Ch. 286, L. 1959; amd. Sec. 8, Ch. 423, L. 1971; R.C.M. 1947, 40-4807.

33-4-202. Declaration of intention to incorporate — articles of incorporation — fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form such a corporation, which declaration shall be signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) proposed articles of incorporation executed in quadruplicate by three or more of the incorporators and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property.

(2) The articles of incorporation shall state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name shall contain the words "farm mutual" or "rural mutual" together with the name of the county wherein is to be located its principal place of business. The name shall not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which office must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether it intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of its existence, which may be perpetual;

(g) the number of its directors, which shall not be less than 5 or more than 11; also the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members and until their successors are elected and qualified;

(h) such other provisions, not inconsistent with law, deemed appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of the property desired insured owned by each in the county or counties where the operations of the corporation are to be carried on.

(3) At the time of filing of the articles of incorporation as provided in subsection (1) above, the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit all such fees with the state treasurer to the credit of the general fund of this state.

History: En. Sec. 475, Ch. 286, L. 1959; R.C.M. 1947, 40-4808.

33-4-203. Approval of articles — commencement of corporate existence. (1) Upon receipt thereof, the commissioner shall forward the proposed articles of incorporation to the attorney general for examination. If the attorney general finds the articles to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, he shall make a certificate of the facts and return it with the proposed articles to the commissioner.

(2) If the commissioner deems the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, he shall reject the name applied for and shall notify the incorporators thereof.

(3) When the proposed articles of incorporation have been approved by the attorney general, the commissioner shall likewise endorse his approval upon each set of the articles, file one set in his office, and forward the other three sets of articles to the incorporators. The incorporators shall file one of such sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is located the principal place of business of the corporation and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles shall be made a part of the corporation's records.

(4) The corporation shall have legal existence as such upon the approval of the articles by the attorney general and the commissioner and completion of the filings referred to in subsection (3) above, but it shall not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505.

History: En. Sec. 476, Ch. 286, L. 1959; R.C.M. 1947, 40-4809.

33-4-204. Amendment of articles. A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting of members called for that purpose, amend its articles of incorporation to extend its corporate duration or in any particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation. The amended articles of incorporation shall be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment shall be contained in the notice given of any such annual or special meeting.

History: En. Sec. 477, Ch. 286, L. 1959; R.C.M. 1947, 40-4810.

33-4-205. Certified copies of articles as evidence. A copy of the articles of incorporation of a farm mutual insurer and any amendments thereof filed pursuant to law and certified by the commissioner shall be received in all courts and other places as prima facie evidence of the facts therein stated and of the due incorporation of the insurer.

History: En. Sec. 478, Ch. 286, L. 1959; R.C.M. 1947, 40-4811.

33-4-206. Initial qualifications. When applying for an original certificate of authority as an insurer newly organized in this state, the insurer must have surplus as required by 33-4-401, be otherwise qualified therefor under this code, and:

(1) if a county mutual insurer, it must have received acceptable bona fide written applications from 25 separate persons for substantial insurance of the kinds of insurance proposed to be transacted, aggregating at least $100,000. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(2) if a state mutual insurer, it must have received acceptable bona fide written applications from 100 separate persons, each for substantial insurance, aggregating at least $500,000 of the kinds of insurance proposed to be transacted. Such applicants must have given to the insurer the obligations referred to in 33-4-508 or paid

the premium required therefor, subject to the insurer qualifying to transact the kinds of insurance so applied for.

(3) if to insure growing crops against loss or damage by hail, it must have received applications for such hail insurance from not less than 100 persons resident in Montana owning in the aggregate not less than 5,000 acres of grain. Each such applicant must have given to the insurer the obligations referred to in 33-4-508 or paid the premium required therefor, subject to the insurer qualifying to transact insurance.

History: En. Sec. 480, Ch. 286, L. 1959; R.C.M. 1947, 40-4813.

Part 3

Management

33-4-301. Bylaws — adoption — power to amend. Upon commencement of the legal existence of an insurer, its initial board of directors shall adopt such original bylaws, not inconsistent with the state constitution or this chapter, as may be deemed necessary for the management of its affairs. The bylaws shall be subject to the approval of the insurer's members at their next succeeding meeting. The members shall otherwise have the power to make, modify, and revoke bylaws.

History: En. Sec. 484, Ch. 286, L. 1959; R.C.M. 1947, 40-4817.

33-4-302. Bylaws — contents. (1) The bylaws of a farm mutual insurer shall provide:

(a) as to the liability of each member for payment of the expenses and losses of the insurer and what obligations shall be given therefor when a person applies for insurance;

(b) as to the time when obligations of members for losses and expenses become due;

(c) for limitation of liability of members for the payment of expenses and losses of the insurer;

(d) the terms of office of the directors. At least part of the directors shall be elected at each annual meeting of members. The term of any director shall not be longer than 3 years.

(e) the date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member shall be permitted to cast at least one vote, either in person or, if so authorized in the bylaws, by proxy, for each director to be elected and may cumulate his votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case no election occurs at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a) above;

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) as to who is authorized to adjust losses for the insurer;

(h) for arbitration as provided in 33-4-411, in event the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, reports required of the officers, and the manner of examining and auditing their accounts;

(k) what shall be contained on the corporate seal and when the seal shall be required to be used;

(l) such other matters as may be deemed necessary or convenient for the management of the affairs of the insurer.

History: En. Sec. 485, Ch. 286, L. 1959; R.C.M. 1947, 40-4818.

33-4-303. Bylaws binding upon members. The bylaws of a farm mutual insurer are binding upon all of its members and as from time to time amended are a part of the contracts of insurance between the insurer and its members.

History: En. Sec. 486, Ch. 286, L. 1959; R.C.M. 1947, 40-4819.

33-4-304. Annual meetings of members — where held. Annual meetings of the members of a farm mutual insurer may be held at its principal business office or at any other place located in any county in this state in which the insurer is authorized to transact insurance.

History: En. Sec. 488, Ch. 286, L. 1959; R.C.M. 1947, 40-4821.

33-4-305. Annual meeting — presentation of annual statement. The annual statement of the insurer as required to be filed with the commissioner under 33-4-313 shall be presented at the annual meeting of the members of the insurer next following the end of the calendar year to which such statement relates.

History: En. Sec. 489, Ch. 286, L. 1959; R.C.M. 1947, 40-4822.

33-4-306. Adjourned annual meetings — notice. Notice of any adjourned annual meeting of members shall be given to the members of an insurer in the same manner as provided in the insurer's bylaws for the regular annual meeting of members.

History: En. Sec. 490, Ch. 286, L. 1959; R.C.M. 1947, 40-4823.

33-4-307. Members' voting rights. Each member of an insurer is entitled to one vote upon each matter coming to a vote at meetings of members of the insurer. A member may vote by written proxy if and as may be provided in the insurer's bylaws. No such proxy shall be made irrevocable or for longer than 1 year.

History: En. Sec. 491, Ch. 186, L. 1959; R.C.M. 1947, 40-4824.

33-4-308. Board of directors — quorum. (1) The general management of the affairs of a farm mutual insurer is vested in its board of directors.

(2) A majority of the directors shall constitute a quorum to do business at any lawful meeting of the board.

History: En. Sec. 494, Ch. 286, L. 1959; R.C.M. 1947, 40-4827.

33-4-309. Directors — election and term. (1) Directors of a farm mutual insurer shall be elected by its members by ballot for terms not to exceed 3 years and shall hold office until their respective successors are elected and have qualified.

(2) No individual shall serve as a director unless a member of the insurer.

History: En. Sec. 495, Ch. 286, L. 1959; R.C.M. 1947, 40-4828.

33-4-310. Officers. The board of directors of an insurer shall elect from their number a president and vice-president. The board shall also elect a secretary and treasurer or a secretary-treasurer, who may or may not be members of the insurer. Officers shall hold their offices for 1 year and until their successors are elected and qualified, unless earlier removed by the board of directors.

History: En. Sec. 496, Ch. 286, L. 1959; R.C.M. 1947, 40-4829.

33-4-311. Bonds of officers. The treasurer and secretary of an insurer shall each give bonds to the insurer for the faithful performance of their duties, in such amount as is designated by the board of directors. Any such bond shall be one issued by an authorized corporate surety.

History: En. Sec. 497, Ch. 286, L. 1959; R.C.M. 1947, 40-4830.

33-4-312. Officers, agents, and employees not licensed. No agent of an insurer shall be required to obtain a license or authority from any public official to transact business for such insurer, nor shall the insurer or any of its officers, agents, or employees be required to pay any fee or license for the transaction of the business of the insurer, except as provided in this chapter.

History: En. Sec. 498, Ch. 286, L. 1959; R.C.M. 1947, 40-4831.

33-4-313. Annual statement — report — filing. (1) The president and secretary of every insurer, on or before March 1 each year, shall prepare, affirm under oath, affix the corporate seal thereto, and file with the commissioner, on forms as prescribed and furnished by him, an annual statement for the preceding calendar year showing the condition of such insurer as of December 31 of such year and exhibiting the following facts:

(a) the names of the president and secretary;
(b) the date of the annual meeting;
(c) the amount of insurance in force;
(d) the number of members;
(e) the number of assessments made during the year;
(f) the amount paid in losses during the year;
(g) the amount of the losses claimed and not paid, with the reason for nonpayment;
(h) the number of members withdrawn, suspended, and expelled during the year;
(i) the number of new members admitted during the year;
(j) the expenses during the year;
(k) the amount of money on hand;
(l) the amount and character of the insurer's assets;
(m) the amount of the insurer's liabilities, including any reserves required to be established under this chapter;
(n) such other information concerning the insurer's affairs as the commissioner may reasonably require.

(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under 33-4-404.

(3) A copy of such annual statement and report of expenditures for educational purposes shall be filed by each county mutual insurer with the county clerk and recorder of the county wherein is located its principal place of business.

History: En. Sec. 499, Ch. 286, L. 1959; R.C.M. 1947, 40-4832.

33-4-314. Annual statement — exclusive report — penalty for failure to file. (1) No report, statement, or return of any nature shall be required of any farm mutual insurer other than those required by 33-4-313.

(2) The commissioner may suspend or revoke the certificate of authority of any insurer failing to file its annual statement as required.

History: En. Sec. 500, Ch. 286, L. 1959; R.C.M. 1947, 40-4833.

33-4-315. Examination by commissioner — expense. (1) The commissioner has power, at any time, to investigate and examine the affairs and books of any insurer.

(2) The charges to be paid by the insurer to the commissioner and his examiners for investigation and examinations provided for in subsection (1) above shall not exceed $100 in any one calendar year unless otherwise expressly authorized by the insurer.

History: En. Sec. 501, Ch. 286, L. 1959; R.C.M. 1947, 40-4834.

33-4-316. Records — inspections. (1) A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files, and records of the insurer shall be located at its principal place of business or, in the case of a county mutual insurer, at such place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board.

(2) The books, files, and records of the insurer shall be available for inspection by the insurer's directors and officers and by the commissioner or his duly constituted examiner at all reasonable times.

History: En. Sec. 508, Ch. 286, L. 1959; R.C.M. 1947, 40-4841.

Part 4

Finance

33-4-401. Surplus funds required. A domestic farm mutual insurer may hereafter be authorized to transact insurance if otherwise in compliance with the applicable provisions of this chapter, if it has and thereafter maintains surplus funds as follows:

(1) if a state mutual insurer, surplus of not less than $100,000;

(2) if a county mutual insurer, surplus of not less than $20,000; or

(3) if to insure growing crops against hail or other hazards, surplus in the amount of 150% of the amount otherwise required under this section. This provision (3) shall not apply as to any domestic insurer first authorized as such prior to January 1, 1956, which transacts business on the pro rata, nonassessable plan, under which plan a pro rata portion only of insured losses is paid in event advance premiums collected are inadequate to pay all such losses in full.

History: En. Sec. 482, Ch. 286, L. 1959; R.C.M. 1947, 40-4815.

33-4-402. Members' liability — limitation. All liability of the members of a farm mutual insurer shall be as limited in the insurer's bylaws. As to insurers transacting business on the cash premium plan, the limitation shall comply with 33-4-504(4). No member shall be required to pay more than the full amount of his obligation given to the insurer or of his liability as provided for in the bylaws.

History: En. Sec. 492, Ch. 286, L. 1959; R.C.M. 1947, 40-4825.

33-4-403. Investments. (1) When so directed by a majority vote of its members present at a duly called and held meeting of members, the directors of a farm mutual insurer shall have power to invest the insurer's funds or any part thereof in any of the following:

(a) bonds or other securities issued by the United States government or by any agency thereof;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency thereof;

(c) general obligation bonds or warrants of any state, county, or city, when recommended by the commissioner and approved by the state examiner;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3) below.

(2) At the time of making any such investment the document evidencing the same must be stamped with the name of the insurer with the following notation printed or written thereon: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) No real estate loan shall be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. No such loan shall be for a term longer than 10 years. The foregoing provisions shall not be deemed to prevent the renewal or extension of loans already made and shall not apply to real estate loans which are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans which are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of such loans; nor shall such provisions be deemed to prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors such subsequent liens are necessary further to secure the payment of any debts and save the insurer from loss.

History: En. Sec. 502, Ch. 286, L. 1959; R.C.M. 1947, 40-4835.

33-4-404. Expenditure of funds for educational purposes. An insurer may spend in any one year up to 5% of its net earnings of the preceding year for educational purposes. A complete and itemized report of such expenditures shall be filed by the insurer as part of its annual report required under 33-4-313.

History: En. Sec. 503, Ch. 286, L. 1959; R.C.M. 1947, 40-4836.

33-4-405. Safety fund. (1) Any domestic farm mutual insurer may create a safety fund, in addition to any surplus required under 33-4-401 or reserve otherwise required, for the purpose of paying insured losses or lawful expenses or obligations of the insurer as they are incurred.

(2) The safety fund shall not exceed in amount 3% of the total amount of insurance in force in the insurer.

(3) The safety fund shall not be used for any purpose except as specified in subsection (1) above.

History: En. Sec. 504, Ch. 286, L. 1959; R.C.M. 1947, 40-4837.

33-4-406. Reserves — cash premium plan. Each insurer transacting business on the cash premium plan shall maintain the following reserves:

(1) a loss reserve, in amount reasonably adequate to pay in full all losses already incurred but currently unpaid. The amount subsequently paid on such losses shall be credited against this reserve.

(2) a reserve for unearned premiums, which reserve shall be computed at 50% of net premiums (gross premiums less premiums returned) charged and collected for unexpired policy periods that commenced during the calendar year covered by the financial statement plus 100% of such net premiums charged and collected in advance for policy periods that are to commence after such calendar year. In the alternative, the insurer may at its option compute its entire reserve for unearned premiums as the aggregate amount of the pro rata unearned premiums for each policy in force as at the end of the calendar year to be covered by the financial statement.

History: En. Sec. 505, Ch. 286, L. 1959; R.C.M. 1947, 40-4838.

33-4-407. Profits or dividends. No insurer shall accumulate any profits as such or pay any dividends. This provision shall not be deemed to prohibit an insurer from accumulating and maintaining surplus funds as required to be maintained by it under this chapter or a safety fund as authorized under 33-4-405 or from accumulating and maintaining other voluntary reserves for such purposes and in such amounts as may be reasonable. Limitations upon any such accumulations and the purposes thereof may be provided for in the insurer's bylaws.

History: En. Sec. 506, Ch. 286, L. 1959; R.C.M. 1947, 40-4839.

33-4-408. Deficiency of surplus. (1) If the surplus funds of a farm mutual insurer at any time fall below the amount required to be maintained under this chapter, the insurer shall cure such deficiency within 6 months thereafter, notwithstanding that new losses or expenses may be incurred within such 6-month period.

(2) If the deficiency is not so cured, the commissioner may, upon the insurer's written application therefor, allow an additional reasonable period, not to exceed 6 months, for the curing of the deficiency.

(3) If the deficiency is not so cured within the first 6-month period, if additional time is not so applied for, or within such additional period as the commissioner may so allow, the commissioner shall forthwith suspend or revoke the insurer's certificate of authority.

History: En. Sec. 507, Ch. 286, L. 1959; R.C.M. 1947, 40-4840.

33-4-409. Fees and taxes. Except for the fees for filing articles of incorporation as provided in 33-4-202 and 33-4-203, for issuance and renewal of certificate of authority as provided in 33-4-505, and for costs of examination by the commissioner as limited in 33-4-315(2), domestic farm mutual insurers shall not be subject to any other or additional fees or taxes of any kind except for the usual ad valorem taxes upon real estate and tangible personal property of the insurer.

History: En. Sec. 509, Ch. 286, L. 1959; R.C.M. 1947, 40-4842.

33-4-410. Losses — notice — adjustment. (1) Every member of a domestic farm mutual insurer who has sustained any insured loss or damage shall immediately notify the insurer's secretary thereof and of the amount of damage or loss claimed.

(2) Upon receipt of the notice of loss referred to in subsection (1) above, the secretary shall notify the person or persons authorized by the bylaws of such insurer to ascertain the amount of the loss or damage and adjust the same.

History: En. Sec. 514, Ch. 286, L. 1959; R.C.M. 1947, 40-4847.

33-4-411. Arbitration — committee — compensation. (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant and if so provided for in the insurer's bylaws, the matter shall be submitted to three persons as a committee of reference, one of whom shall be selected by the claimant, one by the insurer, and the third by such two persons, all of whom shall be sworn to a faithful and impartial investigation and award.

(2) The committee of reference shall have authority to examine witnesses and determine all matters in dispute. The decision or award of the committee shall be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award shall not be made until after maturity of such crop. The decision or award of the committee shall be final and binding upon all parties, unless an interested party appeals to the court within 30 days thereafter.

(3) The compensation of each member of any such committee shall be at the rate of $10 per day for each day of service in the discharge of his duties. Such compensation shall be paid by the claimant, unless the award of the committee exceeds the sum theretofore offered by the insurer in settlement of the claim and in which case the compensation shall be paid by the insurer.

History: En. Sec. 515, Ch. 286, L. 1959; R.C.M. 1947, 40-4848.

33-4-412. Obligations or assessments due — losses payable. (1) Obligations or assessments of members for losses and expenses become due and payable at such time as may be provided in the bylaws of the insurer, and the insurer shall use due diligence to collect each obligation or assessment.

(2) Any valid claim for an insured loss against an insurer transacting business on the assessment plan shall not be payable by the insurer until 30 days after such obligations of the members are due and payable.

History: En. Sec. 516, Ch. 286, L. 1959; R.C.M. 1947, 40-4849.

33-4-413. Suit to collect obligations — liability of directors or officers. (1) An insurer may institute a suit against any member of such insurer if the member fails to pay when due any obligation or liability of the member given such insurer under the provisions of this chapter.

(2) The directors or officers of an insurer are liable in their individual capacity to the person sustaining an insured loss if they willfully refuse or neglect to perform the duties imposed upon them by the provisions of this section.

History: En. Sec. 517, Ch. 286, L. 1959; R.C.M. 1947, 40-4850.

33-4-414. Proportionate payment of losses. If the aggregate whole amount of the members' obligations to an insurer transacting business on the assessment plan are insufficient to pay all valid claims for losses under the insurer's contracts of insurance after necessary expenses in any one year, then such claimants insured by the insurer shall receive their proportionate share of the funds realized from such obligations in full satisfaction of such losses.

History: En. Sec. 518, Ch. 286, L. 1959; R.C.M. 1947, 40-4851.

33-4-415. Suit to collect for loss. If the insurer fails to pay any insured loss when due, an action may be maintained against it to collect for such loss, but subject to 33-4-414 as to assessment plan insurers.

History: En. Sec. 519, Ch. 286, L. 1959; R.C.M. 1947, 40-4852.

Part 5

Insurance Operations

33-4-501. Insuring powers in general. (1) A farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) farm dwellings and buildings, including the usual contents therein, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of such insurer or by his spouse;

(b) dwellings designed for occupancy by not over two families, together with the usual contents thereof, situated in an incorporated city or town if such property is owned by a member of the insurer or by his spouse and if such member has other insurance of farm property with the insurer for a substantial amount;

(c) rural schoolhouses and buildings used in connection therewith, rural community houses or rural churches or other rural public buildings.

(2) Except as provided in subsection (1)(c) above, an insurer shall not insure any property not owned by a member or by his spouse.

(3) An insurer shall not insure any property situated within the limits of incorporated towns or cities except as provided in subsection (1)(b) above and shall not so insure unless it has and maintains the surplus funds as required under 33-4-401.

History: En. Sec. 470, Ch. 286, L. 1959; R.C.M. 1947, 40-4803.

33-4-502. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed 10% of the admitted assets of the insurer or $25,000, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against.

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967; amd. Sec. 1, Ch. 94, L. 1975; R.C.M. 1947, 40-4804.

33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers and may accept reinsurance from other farm mutual insurers.

History: En. Sec. 472, Ch. 286, L. 1959; R.C.M. 1947, 40-4805.

33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on the cash premium plan altogether or on the assessment plan altogether, whichever plan is provided for in its articles of incorporation or bylaws.

(2) If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's insurance the premium in cash in such amount as the insurer deems will be adequate to cover losses and expenses incurred during the term of such insurance.

(3) If transacting business on the assessment plan, the insurer will depend for the payment of losses and expenses principally upon assessments from time to time levied upon members either before or after such losses or expenses have been incurred. This provision shall not be construed, however, as preventing any such insurer from collecting from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance; nor shall it be

deemed to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.

(4) An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for special assessment of its members in event the cash premium charged is found by it to be inadequate to pay in full losses and expenses currently incurred. The bylaws shall provide a specific limitation as to the amount which can be so assessed in any one policy year, such amount to be not less than one or more than six times the premium charged on each member's policy at the annual rate for a term of 1 year.

History: En. Sec. 473, Ch. 286, L. 1959; R.C.M. 1947, 40-4806.

33-4-505. Certificate of authority required — issuance — renewal — fee. (1) No farm mutual insurer shall insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) Upon application therefor the commissioner shall issue such a certificate of authority to every insurer qualified therefor under this chapter.

(3) Every such certificate of authority shall expire at midnight on the April 30 next following its date of issuance unless theretofore revoked for cause or otherwise terminated. Unless he finds that the insurer is not qualified therefor under this chapter, the commissioner shall issue to the insurer a renewal certificate of authority on or before May 1 of each year. The commissioner shall not issue any such renewal certificate of authority to any insurer which has not filed its annual statement and report of expenditures as required under 33-4-313.

(4) For each issuance and each renewal of its certificate of authority, the insurer shall pay to the commissioner a fee of $5 if a county mutual insurer or $20 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the general fund of this state.

(5) A certificate of authority shall be subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to herein.

History: En. Sec. 483, Ch. 286, L. 1959; R.C.M. 1947, 40-4816.

33-4-506. Members — minimum membership. (1) No person may become a member of a farm mutual insurer except by insuring therein property owned by him so insurable under this chapter.

(2) The membership of such an insurer shall consist of the persons lawfully insuring therein.

(3) The total membership of the insurer shall at all times be not less than the number of persons required by 33-4-201 to incorporate such an insurer.

History: En. Sec. 487, Ch. 286, L. 1959; R.C.M. 1947, 40-4820.

33-4-507. Withdrawal of member — cancellation by insurer. (1) Any member of an insurer may withdraw therefrom by surrendering his policy to the insurer for cancellation and paying all obligations then owing by him to the insurer.

(2) The insurer has power to cancel the policy of any member for any cause deemed adequate by the insurer and upon not less than 10 days' written notice in advance of cancellation delivered to the member or mailed to his address last of record with the insurer.

History: En. Sec. 493, Ch. 286, L. 1959; R.C.M. 1947, 40-4826.

33-4-508. Application for insurance. All persons desiring insurance shall make written application therefor to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of application give his obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws and make such advance payment in cash as insurer may require.

History: En. Sec. 510, Ch. 286, L. 1959; R.C.M. 1947, 40-4843.

33-4-509. Application and policy forms filed with commissioner. All forms of application for insurance and of policies proposed to be used by an insurer shall be filed with the commissioner at least 30 days in advance of any such use. The commissioner shall disapprove any such form found by him to be unlawful, illegible, or misleading. An insurer shall not use any such form after it has received the commissioner's notice of disapproval setting forth the reasons therefor.

History: En. Sec. 511, Ch. 286, L. 1959; R.C.M. 1947, 40-4844.

33-4-510. Rates — filing — discrimination. A farm mutual insurer is not required to file any of its insurance rates with the commissioner. No such rate shall be unfairly discriminatory as between subjects of insurance covered for like perils under like policies and having substantially the same insuring, exposure, and underwriting characteristics.

History: En. Sec. 512, Ch. 286, L. 1959; R.C.M. 1947, 40-4845.

33-4-511. Insurance of schools, community houses, and churches. (1) No contract of insurance effected upon the property of any school district, rural community house, rural church, or rural public building pursuant to 33-4-501 shall be deemed to constitute such school district or the owners of any such community house, church, or public building a member of the insurer.

(2) No contract of insurance effected upon any rural school building, rural community house, rural church, or other rural public building referred to in 33-4-501(1)(c) shall be invalid because the directors or any director or officer of the insurer at the time of effecting the insurance coverage was a trustee, director, agent, custodian, or manager or in any way in control, supervision, or management of any or all of the property so insured.

History: En. Sec. 513, Ch. 286, L. 1959; R.C.M. 1947, 40-4846.

CHAPTER 5

RECIPROCAL INSURERS

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Part 1

General Provisions

33-5-101. Scope of chapter — existing insurers. (1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(2) Existing authorized reciprocal insurers shall after January 1, 1961, comply with the provisions of this chapter and shall make such amendments to their subscribers' agreement, power of attorney, policies, and other documents and accounts and perform such other acts as may be required for such compliance.

History: En. Sec. 540, Ch. 286, L. 1959; R.C.M. 1947, 40-5003.

33-5-102. Definitions. (1) "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers", of reciprocal agreements of indemnity, the interexchange being effectuated through an attorney-in-fact common to all such persons.

(2) A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide reciprocal insurance among themselves.

History: En. Secs. 538, 539, Ch. 286, L. 1959; R.C.M. 1947, 40-5001, 40-5002.

33-5-103. Name — suits. A reciprocal insurer shall:

(1) have and use a business name. The name shall include the word "reciprocal", "interinsurer", "interinsurance", "exchange", "underwriters", or "underwriting".

(2) sue and be sued in its own name.

History: En. Sec. 542, Ch. 286, L. 1959; R.C.M. 1947, 40-5005.

33-5-104. Attorney — not doing business. (1) "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

History: En. Sec. 543, Ch. 286, L. 1959; R.C.M. 1947, 40-5006.

Part 2

Formation

33-5-201. Organization of reciprocal insurer. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal [insurer] shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) a copy of the subscribers' agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(3) Such declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

History: En. Sec. 545, Ch. 286, L. 1959; R.C.M. 1947, 40-5008.

33-5-202. Merger or conversion. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with 33-5-411 and a reasonable length of time within which to exercise such right.

History: En. Sec. 564, Ch. 286, L. 1959; R.C.M. 1947, 40-5027.

Part 3

Management

33-5-301. Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) the powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) the general services to be performed by the attorney;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses to be paid by the insurer; and

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 1 or more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective as to a domestic reciprocal insurer until approved by the commissioner.

History: En. Sec. 547, Ch. 286, L. 1959; R.C.M. 1947, 40-5010.

33-5-302. Modifications. Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively or as to any insurance contract issued prior thereto.

History: En. Sec. 548, Ch. 286, L. 1959; R.C.M. 1947, 40-5011.

33-5-303. Attorney's bond. (1) Concurrently with the filing of the declaration provided for in 33-5-201, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2) hereof. The bond shall be executed by the attorney and by an authorized corporate surety and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of $25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands and that he will not withdraw or appropriate to his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the commissioner.

History: En. Sec. 549, Ch. 286, L. 1959; R.C.M. 1947, 40-5012.

33-5-304. Action on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

History: En. Sec. 550, Ch. 286, L. 1959; R.C.M. 1947, 40-5013.

33-5-305. Subscribers' advisory committee — duties. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

(d) have such additional powers and functions as may be conferred by the subscribers' agreement.

History: En. Sec. 555, Ch. 286, L. 1959; R.C.M. 1947, 40-5018.

Part 4

Finance

33-5-401. Surplus funds required. (1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) to transact property insurance, surplus funds of not less than $200,000;

(b) to transact casualty insurance, other than workers' compensation, surplus funds of not less than $200,000.

(2) In addition to surplus required to be maintained under subsection (1) above, the insurer shall have, when first so authorized, expendable surplus in amount as required of a like foreign reciprocal insurer under 33-2-110.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum

capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance.

History: En. Sec. 544, Ch. 286, L. 1959; R.C.M. 1947, 40-5007.

33-5-402. Contributions to insurer. The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given.

History: En. Sec. 552, Ch. 286, L. 1959; R.C.M. 1947, 40-5015.

33-5-403. Financial condition — method of determining. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than 90 days shall be allowed as assets.

(5) An assessment levied upon subscribers and not collected shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

History: En. Sec. 553, Ch. 286, L. 1959; R.C.M. 1947, 40-5016.

33-5-404. Subscribers' liability. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several, and proportionate liability, and not joint.

(2) Except as to a nonassessable policy each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than 1 or more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in 33-5-406.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

History: En. Sec. 556, Ch. 286, L. 1959; R.C.M. 1947, 40-5019.

33-5-405. Subscribers' liability on judgment. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

History: En. Sec. 557, Ch. 286, L. 1959; R.C.M. 1947, 40-5020.

33-5-406. Assessments. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as stated in accordance with 33-5-404, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable.

History: En. Sec. 558, Ch. 286, L. 1959; R.C.M. 1947, 40-5021.

33-5-407. Time limit for assessments. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) while his policy is in force or within 1 year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment; or

(2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while his policy is in force or within 1 year after its termination.

History: En. Sec. 559, Ch. 286, L. 1959; R.C.M. 1947, 40-5022.

33-5-408. Aggregate liability. No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

History: En. Sec. 560, Ch. 286, L. 1959; R.C.M. 1947, 40-5023.

33-5-409. Nonassessable policies. (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued unless it qualifies to and does extinguish such liability of all its sub-

scribers and in all such policies for all kinds of insurance transacted by it; except that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

History: En. Sec. 561, Ch. 286, L. 1959; R.C.M. 1947, 40-5024.

33-5-410. Distribution of savings. A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings, or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks or policies or between subscribers, but this shall not prevent retrospective rating, distribution on a retrospective plan, or distribution varying as to classes of subscribers based on the experience of such subscribers.

History: En. Sec. 562, Ch. 286, L. 1959; R.C.M. 1947, 40-5025.

33-5-411. Subscribers' share in assets. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in 33-5-402, and the return of any unused premium, savings, or credits then standing on subscribers' accounts shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

History: En. Sec. 563, Ch. 286, L. 1959; R.C.M. 1947, 40-5026.

33-5-412. Impaired reciprocals. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscriber for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation.

History: En. Sec. 565, Ch. 286, L. 1959; R.C.M. 1947, 40-5028.

33-5-413. Annual statement. (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(2) The statement shall be supplemented by such information as may be required by the commissioner relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

History: En. Sec. 551, Ch. 286, L. 1959; R.C.M. 1947, 40-5014.

Part 5

Insurance Operations

33-5-501. Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact.

History: En. Sec. 541, Ch. 286, L. 1959; R.C.M. 1947, 40-5004.

33-5-502. Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

History: En. Sec. 546, Ch. 286, L. 1959; R.C.M. 1947, 40-5009.

33-5-503. Eligible subscribers — liability of representative. (1) Individuals, partnerships, and corporations of this state may make application, enter into agreement for, hold policies or contracts in or with, and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations.

(2) Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees, or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships, and corporations to the same extent that individuals, partnerships, and corporations are herein authorized to exchange reciprocal interinsurance contracts.

(3) Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

History: En. Sec. 554, Ch. 286, L. 1959; R.C.M. 1947, 40-5017.

CHAPTER 6

BENEVOLENT ASSOCIATIONS

Part 1 — General Provisions

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33-6-101. Scope of chapter — provisions applicable.
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33-6-103. New benevolent associations prohibited — foreign associations.
33-6-104. Amendments filed with commissioner.

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33-6-201. Officers — number — bond.

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33-6-301. Receipts for payment to association.
33-6-302. Expenses — assessment for expenses — shown in annual statement.
33-6-303. Assessment for death benefit — notice — procedure.
33-6-304. Annual statement.

Part 4 — Insurance Operations

33-6-401. Annual license — fee — evidence.
33-6-402. Agents — license.
33-6-403. Officers as agents.
33-6-404. Minimum membership.
33-6-405. Payment of death claims.

Part 1

General Provisions

33-6-101. Scope of chapter — provisions applicable. (1) This chapter applies only to benevolent associations.

(2) No provisions of this code shall apply to any such association unless contained or referred to in this chapter.

(3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, and 7 of chapter 1; 33-1-601 through 33-1-603; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502; 33-2-804; chapter 2, part 9; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; chapter 15; chapter 18; 33-22-304; and 33-22-506.

History: (1), (2)En. Sec. 521, Ch. 286, L. 1959; Sec. 40-4901, R.C.M. 1947; (3)En. Sec. 537, Ch. 286, L. 1959; amd. Sec. 1, Ch. 297, L. 1971; Sec. 40-4917, R.C.M. 1947; R.C.M. 1947, 40-4901, 40-4917.

33-6-102. Definitions. (1) (a) Any corporation, association, or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members whereby, upon decease of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such corporation, association, or society to his legal representatives or to the beneficiary designated by him, which money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of them collected or to be collected from the members thereof or members of a class therein or interest or accretions thereon or accumulations thereof; and wherein the money or other benefit, charity, aid, or relief so realized is applied to or accumulated for the uses and purposes herein specified and/or the uses of such corporation, association, or society and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(b) The definition of benevolent association in subsection (1)(a) above is not applicable to:

(i) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (i) above; or

(iii) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) A "member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members, whereby any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by such association upon the decease of a member to his legal representatives or to the beneficiary or beneficiaries designated by him.

(b) There shall be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) "Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business thereof, whether designated as officers, trustees, comptrollers, managers, or by whatever name called.

History: (1)En. Sec. 522, Ch. 286, L. 1959; amd. Sec. 20, Ch. 535, L. 1975; Sec. 40-4902, R.C.M. 1947; (2) thru (4)En. Secs. 523, 524, 525, Ch. 286, L. 1959; Secs. 40-4903, 40-4904, 40-4905, R.C.M. 1947; R.C.M. 1947, 40-4902, 40-4903, 40-4904, 40-4905.

33-6-103. New benevolent associations prohibited — foreign associations. (1) No benevolent association shall transact or be authorized to transact any business in this state unless it lawfully had authority to transact such business as such an association immediately prior to January 1, 1961.

(2) No new benevolent association shall hereafter be organized or formed in this state.

(3) No association formed or existing under the laws of any other state or jurisdiction shall be authorized to transact business in this state.

History: En. Sec. 526, Ch. 286, L. 1959; R.C.M. 1947, 40-4906.

33-6-104. Amendments filed with commissioner. Each benevolent association shall promptly file with the commissioner a copy, certified to by its president and secretary, of each of the following:

(1) if incorporated, any amendment of articles of incorporation or of bylaws;

(2) if not incorporated, any amendment of articles of association, of agreement, or of rules or agreements with its members;

(3) any modification of its form of membership contracts.

History: En. Sec. 527, Ch. 286, L. 1959; R.C.M. 1947, 40-4907.

Part 2

Management

33-6-201. Officers — number — bond. (1) Each benevolent association shall be in the charge of its officers and shall not have more than five officers.

(2) The treasurer and any other officer having charge of any funds of a benevolent association shall each be bonded in the amount of $1,000, executed to the state of Montana, joint and several, for the use and benefit of the members or beneficiaries of such association. Each such bond shall be on file in the principal office and address of the association, and a certified copy thereof must be filed with the commissioner.

History: En. Sec. 528, Ch. 286, L. 1959; R.C.M. 1947, 40-4908.

Part 3

Finance

33-6-301. Receipts for payment to association. Every benevolent association shall issue a receipt or other evidence of payment to each person making a payment of any kind to the association.

History: En. Sec. 531, Ch. 286, L. 1959; R.C.M. 1947, 40-4911.

33-6-302. Expenses — assessment for expenses — shown in annual statement. (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) 20% of the total amount received during such year, whether as assessments, dues, donations, or by whatever name called, except fees collected for new memberships; or

(b) $15 per death loss incurred during such year.

(2) Such an association may, instead of providing for expenses as in subsection (1) above, assess each of its members for expenses at an amount not to exceed $3 per calendar year, except that such assessment shall not exceed $4 per year where a membership certificate includes within its protection a family group consisting of two or more persons. The proceeds of such assessments shall be placed in an expense fund out of which all of the expenses of the association for such year shall be paid. The association shall show the condition of such expense fund in its annual statement.

(3) The association shall state in its annual statement whether the expenses as to be shown in its next annual statement will be determined as in subsection (1) above or whether the members will be assessed for the same as in subsection (2) above. No association shall use both methods or a combination of such methods.

History: En. Sec. 533, Ch. 286, L. 1959; amd. Sec. 1, Ch. 224, L. 1975; R.C.M. 1947, 40-4913.

33-6-303. Assessment for death benefit — notice — procedure. (1) Within 30 days after a benevolent association receives a completed proof of claim for death of a member, it must mail to each of its members in good standing an assessment notice stating:

(a) the name, date, and place of death of the deceased member;

(b) the number of the proof of death claim assigned thereto by the association;

(c) the amount of the assessment and the expiration date of the assessment payment; and

(d) the number of members in good standing to whom such notices are being sent, as computed from the last completed assessment.

(2) At the time of mailing the assessment notice required by (1) above, the association shall send a duplicate thereof to the commissioner for filing, together with information as to the mailing of the notice to members.

History: En. Sec. 535, Ch. 286, L. 1959; R.C.M. 1947, 40-4915.

33-6-304. Annual statement. (1) In addition to compliance with 33-2-701, the annual statement of a benevolent association shall exhibit the following items and facts:

(a) the name and business address of the association;

(b) the names and addresses of the officers of the association;

(c) the number of membership contracts in force at the commencement of the year and the number of memberships in good standing at the close of the year for which the statement is made. This provision is also applicable to each subgroup or class, if any, of the association.

(d) the number of death losses claimed; the number and total amount of death losses paid; the number of death claims compromised, denied, or resisted, and reasons therefor;

(e) the number of assessments in the association and in each subgroup or class, if any; the amount collected in each such assessment; income to the benevolent association from all other sources; and all other fees, assessments, donations, of any kind or nature, except new membership fees from new members;

(f) the expenses actually incurred during the year; debts unpaid at the commencement of the year; debts and obligations of any kind (not including death losses actually paid) incurred during the year; debts unpaid at the close of the year; a breakdown of expenses to show the amount paid in salaries or commissions, office expense, and other expenses, in those cases where members of the benevolent association are assessed for operating expenses of such association;

(g) whether the association has complied with all of the provisions of 33-6-302 and 33-6-405;

(h) the information required by 33-6-302.

(2) Two officers of the association shall attest under oath to the truth of the facts contained in the annual statement. At least one of such officers must have charge of making up the statement.

(3) A copy of the annual statement certified by the commissioner must be filed before April 1 of each year by the association in the office of the county clerk of the county in which the business office of the association is located.

History: En. Sec. 536, Ch. 286, L. 1959; R.C.M. 1947, 40-4916.

Part 4

Insurance Operations

33-6-401. Annual license — fee — evidence. (1) The authority of such association may be renewed annually but in all cases to terminate on the succeeding June 1. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused.

(2) For each such license or renewal the association shall pay the commissioner $25.

(3) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a benevolent association within the meaning of this chapter.

History: En. 40-4918 by Sec. 2, Ch. 297, L. 1971; R.C.M. 1947, 40-4918(part).

33-6-402. Agents — license. Agents for any benevolent association may be appointed in accordance with chapter 17 and shall be subject to the applicable provisions of such [chapter], except as provided in 33-6-403. No such agent may be appointed if there are less than three officers in charge of the association.

History: En. Sec. 529, Ch. 286, L. 1959; R.C.M. 1947, 40-4909.

33-6-403. Officers as agents. Not exceeding five officers of any benevolent association may act for the association without obtaining a license as an agent. Such officers shall be subject to the jurisdiction of the commissioner in the same manner as though they were licensed as agents under chapter 17.

History: En. Sec. 530, Ch. 286, L. 1959; R.C.M. 1947, 40-4910.

33-6-404. Minimum membership. Each benevolent association shall have at all times not less than 200 members in good standing.

History: En. Sec. 532, Ch. 286, L. 1959; R.C.M. 1947, 40-4912.

33-6-405. Payment of death claims. (1) Each completed proof of claim for death of a member of a benevolent association shall be assigned a number by the association in consecutive order of receipt for each calendar year.

(2) Payment in full on final settlement of death benefits shall be made by the association to the legal heir or heirs or the designated beneficiary or beneficiaries within 20 days after the expiration date stated in the association's notice referred to in 33-6-303(1)(c).

History: En. Sec. 534, Ch. 286, L. 1959; R.C.M. 1947, 40-4914.

CHAPTER 7

FRATERNAL BENEFIT SOCIETIES

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Part 1

General Provisions

33-7-101. Scope of chapter — provisions applicable. (1) Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. No law hereafter enacted shall apply to them unless they be expressly designated therein.

(2) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to fraternal benefit societies to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows: parts 1, 2, 3, 4, and 7 of chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 9; 33-3-308; 33-15-502; and chapter 18.

History: (1)En. Sec. 617, Ch. 286, L. 1959; Sec. 40-5304, R.C.M. 1947; (2)En. Sec. 672, Ch. 286, L. 1959; Sec. 40-5359, R.C.M. 1947; R.C.M. 1947, 40-5304, 40-5359.

33-7-102. Fraternal benefit societies defined. (1) Any incorporated society, order, or supreme lodge, without capital stock, including one exempted under the provisions of 33-7-104(1)(b) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

(2) When used in this chapter the word "society", unless otherwise indicated, means fraternal benefit society.

(3) A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated, or admitted in accordance with its constitution, laws, ritual, and rules, which subordinate lodges or branches are required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

(4) A society shall be deemed to have a representative form of government when:

(a) it provides in its constitution or laws for a supreme legislative or governing body composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;

(b) the representatives elected constitute a majority in number and have not less than two-thirds of the votes or less than the votes required to amend its constitution and laws;

(c) the meetings of the supreme legislative or governing body and the election of officers, representatives, or delegates are held as often as once in 4 calendar years;

(d) the society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

(e) such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

(f) the officers are elected either by the supreme legislative or governing body or by the board of directors; and

(g) the members, officers, representatives, or delegates shall not vote by proxy.

History: (1), (2)En. Sec. 614, Ch. 286, L. 1959; Sec. 40-5301, R.C.M. 1947; (3)En. Sec. 615, Ch. 286, L. 1959; Sec. 40-5302, R.C.M. 1947; (4)En. Sec. 616, Ch. 286, L. 1959; Sec. 40-5303, R.C.M. 1947; R.C.M. 1947, 40-5301, 40-5302, 40-5303.

33-7-103. Definition of premiums. As used in this chapter, "premiums" means premiums, rates, or other required contributions by whatever name known.

History: En. Sec. 645, Ch. 286, L. 1959; R.C.M. 1947, 40-5332.

33-7-104. Exempted and partially exempted societies — restrictions. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and the auxiliaries to such orders, societies, or associations;

(c) domestic societies which limit their membership to employees of a particular city or town, designated firm, business house, or corporation which provide for a death benefit of not more than $400 or disability benefits of not more than $350 to any person in any one year, or both; or

(d) domestic societies or associations of a purely religious, charitable, or benevolent description which provide for a death benefit of not more than $400 or for disability benefits of not more than $350 to any one person in any one year, or both.

(2) Any such society or association described in (c) or (d) of subsection (1) above which provides for death or disability benefits for which benefit certificates are issued and any such society or association included in (1)(d) which has more than 1,000 members shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in (1)(b) above, shall give or allow or promise to give or allow to any person any compensation for procuring new members.

(4) Every society which provides for benefits in case of death or disability resulting solely from accident and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability shall not apply to such society.

(5) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

(6) Societies exempted under the provisions of this section shall also be exempt from all other provisions of the insurance laws of this state.

History: En. Sec. 618, Ch. 286, L. 1959; amd. Sec. 21, Ch. 535, L. 1975; R.C.M. 1947, 40-5305.

33-7-105 through 33-7-110 reserved.

33-7-111. Examination of domestic societies — report. (1) The commissioner or any person he may appoint shall have the power of visitation and examination into the affairs of any domestic society, and he shall make such examination at least once in every 3 years. He may employ assistants for the purpose of such examination, and he or any person he may appoint shall have free access to all books, papers, and documents that relate to the business of the society.

(2) In making any such examination the commissioner may summon and qualify as witnesses under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

(3) A summary of the report of the commissioner and such recommendations or statements of the commissioner as may accompany such report shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the commissioner, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations, and statements of the commissioner shall be furnished by the society to each member of such board of directors or other governing body.

(4) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

History: En. Sec. 653, Ch. 286, L. 1959; R.C.M. 1947, 40-5340.

33-7-112. Examination of foreign and alien societies. (1) The commissioner or any person whom he may appoint may examine any foreign or alien society transacting or applying for admission to transact business in this state. He may employ assistants, and he or any person he may appoint shall have free access to all books, papers, and documents that relate to the business of the society.

(2) He may in his discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province, or country where such society is organized.

(3) The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined or by the society whose certificate obligations have been valued, upon statements furnished by the commissioner.

History: En. Sec. 654, Ch. 286, L. 1959; R.C.M. 1947, 40-5341.

33-7-113. No adverse publications. Pending, during, or after an examination or investigation of a society, either domestic, foreign, or alien, the commissioner shall make public no financial statement, report, or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any society until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report, or finding and to make such showing in connection therewith as it may desire.

History: En. Sec. 655, Ch. 286, L. 1959; R.C.M. 1947, 40-5342.

33-7-114. Service of process. (1) Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

(2) Service shall only be made upon the commissioner or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered or certified mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading, or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of $2.

History: En. Sec. 665, Ch. 286, L. 1959; R.C.M. 1947, 40-5352.

33-7-115. Violation of standards of conduct — injunction — liquidation — receivership. (1) The commissioner shall notify the society of his findings, state in writing the reasons for his dissatisfaction, and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected or why an action in quo warranto should not be commenced against the society when he upon investigation finds that a domestic society:

(a) has exceeded its powers;

(b) has failed to comply with any provision of this chapter;

(c) is not fulfilling its contracts in good faith;

(d) has a membership of less than 400 after an existence of 1 year or more; or

(e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts relating thereto to the attorney general who shall, if he deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto. No application or petition for injunction against any domestic, foreign, or alien society or branch thereof shall be recognized in any court of this state unless made by the attorney general upon request of the commissioner.

(3) The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

(4) No society so enjoined shall have the authority to do business until:

(a) the commissioner finds that the violation complained of has been corrected;

(b) the costs of such action have been paid by the society if the court finds that the society was in default as charged;

(c) the court has dissolved its injunction; and

(d) the commissioner has reinstated the society's license.

(5) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(6) No action under this section shall be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as such receiver.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership shall be applicable to a society which voluntarily determines to discontinue business.

History: Ap. p. Sec. 669, Ch. 286, L. 1959; Sec. 40-5356, R.C.M. 1947; Ap. p. Sec. 670, Ch. 286, L. 1959; Sec. 40-5357, R.C.M. 1947; R.C.M. 1947, 40-5356, 40-5357.

33-7-116. Review. All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review by the court in accordance with the provisions of 33-1-711.

History: En. Sec. 671, Ch. 286, L. 1959; R.C.M. 1947, 40-5358.

Part 2

Formation

33-7-201. Organization — incorporation. The organization of a society shall be governed as follows: seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer, competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(1) the proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(2) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised (such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, or religious advantages may be set forth among the purposes of the society); and

(3) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than 1 year from the date of the issuance of the permanent certificate.

History: En. Sec. 622, Ch. 286, L. 1959; R.C.M. 1947, 40-5309.

33-7-202. Filing articles and documents — bond — preliminary certificate. (1) Such articles of incorporation, duly certified copies of the constitution, laws, and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year shall be filed with the commissioner, who may require such further information as he deems necessary.

(2) The bond with sureties approved by the commissioner shall be in such amount, not less than $5,000 or more than $25,000, as required by the commissioner. All documents filed are to be in the English language.

(3) If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

History: En. Sec. 623, Ch. 286, L. 1959; R.C.M. 1947, 40-5310.

33-7-203. Time for completing organization. No preliminary certificate granted under the provisions of this section shall be valid after 1 year from its date or after such further period, not exceeding 1 year, as may be authorized by the commissioner upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in 1 year from the date of the preliminary certificate or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

History: En. Sec. 624, Ch. 286, L. 1959; R.C.M. 1947, 40-5311.

33-7-204. Initial solicitations — qualifications. (1) Upon receipt of a preliminary certificate from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected.

(2) No society shall incur any liability other than for the return of such advance premium or issue any certificate or pay, allow, or offer or promise to pay or allow any death or disability benefit to any person until:

(a) actual bona fide applications for death benefits have been secured aggregating at least $500,000 on not less than 500 lives;

(b) all such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

(c) certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

(d) ten subordinate lodges or branches have been established into which the 500 applicants have been admitted;

(e) there has been submitted to the commissioner, under oath of the president or secretary or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

(f) it shall have been shown to the commissioner, by sworn statement of the treasurer or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least $2,500, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. Such advance premiums shall be held in trust during the period of organization, and if the society has not qualified for a certificate of authority within 1 year, as herein provided, the premiums shall be returned to the applicants.

History: En. Sec. 625, Ch. 286, L. 1959; R.C.M. 1947, 40-5312.

33-7-205. Certificate of compliance — certified copy as evidence. The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

History: En. Sec. 626, Ch. 286, L. 1959; R.C.M. 1947, 40-5313.

33-7-206. Incorporation and continuation of voluntary associations. (1) After January 1, 1962, no unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

(2) Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, shall incur the obligations and enjoy the benefits thereof the same as though originally incorporated, and such corporation shall be deemed a continuation of the original voluntary association. The officers shall be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association shall not affect existing suits, claims, or contracts.

History: En. Sec. 629, Ch. 286, L. 1959; R.C.M. 1947, 40-5316(part).

33-7-207. Corporate powers retained. Any incorporated society authorized to transact business in this state on January 1, 1961, may thereafter exercise all the rights, powers, and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

History: En. Sec. 628, Ch. 286, L. 1959; R.C.M. 1947, 40-5315.

33-7-208 through 33-7-210 reserved.

33-7-211. Consolidations and mergers. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December 31 next preceding the date of the contract;

(c) a certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme legislative or governing body of each society; and

(d) evidence that at least 60 days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

(2) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

(3) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state and a certificate of such approval filed with the commissioner or, if the laws of such state contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such state and a certificate of such approval filed with the commissioner.

History: En. Sec. 666, Ch. 286, L. 1959; R.C.M. 1947, 40-5353.

33-7-212. Consolidations and mergers — effect. Upon the consolidation or merger becoming effective as provided in 33-7-211, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument; except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

History: En. Sec. 667, Ch. 286, L. 1959; R.C.M. 1947, 40-5354.

33-7-213. Conversion into mutual life insurer. Any domestic fraternal benefit society may be converted and licensed as a mutual life insurer by compliance with the applicable requirements of chapter 3 of this title if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit the plan to the supreme legislative or governing body of such society at any regular or special meeting thereof by giving a full, true, and complete copy of the plan with the notice of such meeting. The notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of two-thirds of all members of such body shall be necessary for the approval of the agreement. No such conversion shall take effect unless and until approved by the commissioner, who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

History: En. Sec. 668, Ch. 286, L. 1959; R.C.M. 1947, 40-5355.

Part 3

Management

33-7-301. Constitution and laws — general powers. (1) Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of its members from time to time. It shall have the power to change, alter, add to, or amend such constitution and laws.

(2) A society shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

History: En. Sec. 627, Ch. 286, L. 1959; R.C.M. 1947, 40-5314.

33-7-302. Amendment of articles of incorporation, constitution, or laws — synopsis to members — certified copies as evidence. (1) A domestic society may amend its articles of incorporation, constitution, or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution, or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution, or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission thereof, a majority of all of the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

(2) No amendment to the articles of incorporation, constitution, or laws of any domestic society shall take effect unless approved by the commissioner, who shall approve such amendment if he finds it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves the amendment, the reasons therefor shall be stated in the written notice.

(3) Within 90 days from the approval thereof by the commissioner, all such amendments or a synopsis thereof shall be furnished by the society to all members either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof have been furnished the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of or additions to its articles of incorporation, constitution, or laws within 90 days after the enactment of same.

(5) Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

History: En. Sec. 630, Ch. 286, L. 1959; R.C.M. 1947, 40-5317.

33-7-303. No waiver provision. The constitution and laws of the society may provide that no subordinate body or any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

History: En. Sec. 631, Ch. 286, L. 1959; R.C.M. 1947, 40-5318.

33-7-304. Location of office — place of meeting — records in English language. (1) The principal office of any domestic society shall be located in this state. The meetings of its supreme legislative or governing body may be held in any state, district, province, or territory wherein such society has at least five subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

(2) The minutes of the proceedings of the supreme or governing body and of the board of directors or corresponding body of a society shall be in the English language.

History: En. Sec. 632, Ch. 286, L. 1959; R.C.M. 1947, 40-5319.

33-7-305. Society operated institutions — funeral homes prohibited. (1) It shall be lawful for a society to create, maintain, and operate charitable, benevolent, or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold, or lease personal property or real property located within or without this state, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

(2) Maintenance, treatment, and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement.

(3) No society shall own or operate funeral homes or undertaking establishments.

History: En. Sec. 633, Ch. 286, L. 1959; R.C.M. 1947, 40-5320.

Part 4

Finance

33-7-401. Member's share of deficiency. A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board and that if the payment be not made it shall stand as an indebtedness against the member's certificate and draw interest not to exceed 5% per annum compounded annually.

History: En. Sec. 635, Ch. 286, L. 1959; R.C.M. 1947, 40-5322.

33-7-402. Assets held for society — use — assets set aside for purpose. (1) All assets shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(3) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after January 1, 1962, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

History: En. Sec. 648, Ch. 286, L. 1959; R.C.M. 1947, 40-5335.

33-7-403. Investments. A society shall invest its funds only in such investments as are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated shall be held to meet the requirements of this section for the investment of funds.

History: En. Sec. 649, Ch. 286, L. 1959; R.C.M. 1947, 40-5336.

33-7-404. Annual statement — financial condition. (1) Reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section.

(2) Every society transacting business in this state shall annually, on or before March 1, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of $25 for filing same. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(3) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

History: En. Sec. 650, Ch. 286, L. 1959; R.C.M. 1947, 40-5337.

33-7-405. Reserve valuation. (1) As a part of the annual statement required under 33-7-404, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided, the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months.

(2) Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present

midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to January 1, 1962, shall be determined in accordance with the provisions of law applicable prior to January 1, 1961, and as to certificates issued on or after January 1, 1962, shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(3) Reserves according to the commissioners' reserve valuation method for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (a) over (b), as follows:

(a) a net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such certificate; and

(b) a net 1-year term premium for such benefits provided for in the first certificate year.

(4) Reserves according to the commissioners' reserve valuation method for life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, annuity and pure endowment benefits, disability and accidental death benefits in all certificates and contracts, and all other benefits except life insurance and endowment benefits shall be calculated by a method consistent with the principles of subsection (3) above.

(5) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in subsections (7) and (8) below.

(6) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(7) The minimum standards of valuation for certificates issued prior to January 1, 1962, shall be those provided by the law applicable immediately prior to January 1, 1961, but not lower than the standards used in the calculating of rates for such certificates.

(8) The minimum standard of valuation for certificates issued after January 1, 1962, shall be 3 ½ % interest and the following tables:

(a) for certificates of life insurance, American men ultimate table of mortality, with Bowerman's or Davis' extension thereof; or with the consent of the commissioner, the commissioner's 1941 standard ordinary mortality table or the commissioner's 1941 standard industrial table of mortality;

(b) for annuity certificates, including life annuities provided or available under optional modes of settlement in such certificates, the 1937 standard annuity table;

(c) for disability benefits issued in connection with life benefit certificates, Hunter's disability table, which, for active lives, shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates, except that the table known as class III disability table (1926) modified to conform to the contractual waiting period shall be used in computing reserves for disability benefits under a contract which presumes that total disability shall be considered to be permanent after a specified period;

(d) for accidental death benefits issued in connection with life benefit certificates, the intercompany double indemnity mortality table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) for noncancelable accident and health benefits, the class III disability table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience.

(9) The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extrahazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of 3 consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

(10) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required hereunder, but the contractual rights of any insured member shall not be affected thereby.

History: En. Sec. 651, Ch. 286, L. 1959; R.C.M. 1947, 40-5338.

33-7-406. Annual statement — penalty for failure to file or to comply. A society neglecting to file the annual statement in the form and within the time provided in this part shall forfeit $100 for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this state shall cease while such default continues.

History: En. Sec. 652, Ch. 286, L. 1959; R.C.M. 1947, 40-5339.

33-7-407. Taxes. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate and office equipment.

History: En. Sec. 656, Ch. 286, L. 1959; R.C.M. 1947, 40-5343.

Part 5

Insurance Operations

33-7-501. Annual license — fee — evidence. (1) The authority of all societies licensed may be renewed annually but in all cases to terminate on the succeeding June 1. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused.

(2) For each such license or renewal the society shall pay the commissioner $10.

(3) A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

History: En. Sec. 619, Ch. 286, L. 1959; R.C.M. 1947, 40-5306(part).

33-7-502. Foreign or alien society — qualifications. (1) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any such society may be licensed to transact business in this state upon a showing that its assets are invested in accordance with the provisions of this chapter and upon filing with the commissioner:

(a) a duly certified copy of its charter or articles of incorporation;

(b) a copy of its constitution and laws, certified by its secretary or corresponding officer;

(c) a power of attorney to the commissioner as prescribed in 33-7-114;

(d) a statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;

(e) a certificate from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;

(f) copies of its certificate forms; and

(g) such other information as he may deem necessary.

(2) Any foreign or alien society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter.

History: En. Sec. 620, Ch. 286, L. 1959; R.C.M. 1947, 40-5307.

33-7-503. Suspension, revocation, or refusal of license of foreign or alien society. (1) The commissioner shall notify the society of his findings when upon investigation he finds that a foreign or alien society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of this chapter;

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public.

(2) He shall state in writing the reasons for his dissatisfaction and require the society to show cause on a date named why its license should not be suspended, revoked, or refused.

(3) If on such date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, he may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to him that such suspension or refusal should be withdrawn or he may revoke the authority of the society to do business in this state.

(4) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

History: En. Sec. 621, Ch. 286, L. 1959; R.C.M. 1947, 40-5308.

33-7-504. Qualifications for membership — member bound to terms — general members. (1) A society may admit to benefit membership any person not less than 15 years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society.

(2) Any person admitted prior to attaining the full age of 18 years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application.

(3) A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

History: En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-505. Benefit increase — evidence of insurability. Any member who shall apply for additional benefits more than 6 months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

History: En. Sec. 634, Ch. 286, L. 1959; amd. Sec. 9, Ch. 423, L. 1971; R.C.M. 1947, 40-5321(part).

33-7-506. Benefits. (1) A society authorized to do business in this state may provide for the payment of:

(a) death benefits in any form;

(b) endowment benefits;

(c) annuity benefits;

(d) temporary or permanent disability benefits as a result of disease or accident;

(e) hospital, medical, or nursing benefits due to sickness or bodily infirmity or accident; and

(f) monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of $300.

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of a member's family, including the member, the member's spouse, and minor children, in the same or separate certificates.

History: En. Sec. 636, Ch. 286, L. 1959; R.C.M. 1947, 40-5323.

33-7-507. Benefits on lives of children — requisites. A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than 18 years of age at time of application therefor, upon the application of some adult person, as its laws or rules may provide, which benefits shall be in accordance with the provisions of 33-7-506. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

History: En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(1).

33-7-508. Change of beneficiaries. A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith.

History: En. Sec. 637, Ch. 286, L. 1959; amd. Sec. 16, Ch. 94, L. 1973; R.C.M. 1947, 40-5324(2).

33-7-509. Nonforfeiture benefits, cash surrender values, certificate loans, and other options — value — term. (1) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans, and such other options as its laws may permit. As to certificates issued on and after January 1, 1961, a society shall grant at least one paid-up nonforfeiture benefit, except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66.

(2) In the case of certificates other than those for which reserves are computed on the commissioner's 1941 standard ordinary mortality table or the 1941 standard industrial table, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the excess, if any, of (a) over (b) as follows:

(a) the reserve under the certificate determined on the basis specified in the certificates; and

(b) the sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrendered charge equal to 2 ½% of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

(3) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American men ultimate table of mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than 130% of those shown by the mortality table specified in the certificate for the computation of the reserve.

(4) In the case of certificates for which reserves are computed on the commissioner's 1941 standard ordinary mortality table or the 1941 standard industrial table, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

History: En. Sec. 638, Ch. 286, L. 1959; R.C.M. 1947, 40-5325.

33-7-510. Beneficiaries — funeral benefits. (1) The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws, or rules of the society. Every society by its constitution, laws, or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, but the portion so paid shall not exceed the sum of $500.

(3) If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits are payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

History: En. Sec. 639, Ch. 286, L. 1959; R.C.M. 1947, 40-5326.

33-7-511. Benefits not attachable. No money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other process or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment by the society.

History: En. Sec. 640, Ch. 286, L. 1959; R.C.M. 1947, 40-5327.

33-7-512. Officers not personally liable. The officers and members of the supreme, grand, or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

History: En. Sec. 641, Ch. 286, L. 1959; R.C.M. 1947, 40-5328.

33-7-513. Agreements as to benefits. (1) Every society authorized to do business in this state shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

(2) All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

(3) Any changes, additions, or amendments to the charter or articles of incorporation, constitution, or laws duly made or enacted subsequent to the issuance of the certificate shall bind the member and the beneficiaries and shall govern and control the agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

(4) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

History: En. Sec. 642, Ch. 286, L. 1959; R.C.M. 1947, 40-5329.

33-7-514. Standard provisions. (1) After January 1, 1962, no life benefit certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner.

(2) The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

(a) title on the face and filing page of the certificate clearly and correctly describing its form;

(b) a provision stating the amount of rates, premiums, or other required contributions, by whatever name known, which are payable by the insured under the certificate;

(c) a provision that the member is entitled to a grace period of not less than a full month (or 30 days at the option of the society) in which the payment of any premium after the first may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate.

(d) a provision that the member shall be entitled to have the certificate reinstated at any time within 3 years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value, or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding 6% per annum compounded annually;

(e) except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66, a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate.

(f) a provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than 60 days after the due date of the premium in default;

(g) a statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate and a brief general statement of the method used in calculating such benefits;

(h) a table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first 20 certificate years or during the term of the certificate, whichever is shorter;

(i) a provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of 2 years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service, and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means may also be excepted. The certificate shall be incontestable on the grounds of suicide after it has been in force during the lifetime of the member for a period of 2 years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of 2 years from date of reinstatement with the same exceptions as herein provided.

(j) a provision that in case the age of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age; but if the correct age was not an insurable age under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

(k) a provision or provisions which recite fully or which set forth the substance of all sections of the charter, constitution, laws, or rules of the society in force at the time of issuance of the certificate, the violation of which will result in the termination of or in the reduction of the benefit or benefits payable under the certificate; and

(l) if the constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership, shall have the privilege of maintaining his insurance in force by continuing payment of the required premium.

(3) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate.

History: En. Sec. 643, Ch. 286, L. 1959; R.C.M. 1947, 40-5330.

33-7-515. Prohibited provisions. After January 1, 1962, no life benefit certificate shall be delivered or issued for delivery in this state containing in substance any of the following provisions:

(1) any provision limiting the time within which any action at law or in equity may be commenced to less than 2 years after the cause of action accrues;

(2) any provision by which the certificate purports to be issued or to take effect more than 6 months before the original application for the certificate was made, except in case of transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

(3) any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

History: En. Sec. 644, Ch. 286, L. 1959; R.C.M. 1947, 40-5331.

33-7-516. Accident and health insurance and total and permanent disability insurance certificates — filing and approval. (1) No domestic, foreign, or alien society authorized to do business in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner.

(2) The commissioner shall have power, from time to time, to make, alter, and supersede reasonable regulations prescribing the required, optional, and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of parts 1 through 4 of chapter 22. Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of parts 1 through 4 of chapter 22, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member.

(3) Any filing made hereunder shall be deemed approved unless disapproved within 60 days from the date of such filing.

History: En. Sec. 646, Ch. 286, L. 1959; R.C.M. 1947, 40-5333.

33-7-517. Reinsurance — credit for reserves. (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this state or, if not so authorized, one which is approved by the commissioner; but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner.

(2) It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1961, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

History: En. Sec. 647, Ch. 286, L. 1959; R.C.M. 1947, 40-5334.

33-7-518. Misrepresentation — penalty. (1) No person shall cause or permit to be made, issued, or circulated in any form:

(a) any misrepresentation or false or misleading statement concerning the terms, benefits, or advantages of any fraternal insurance contract now issued or to be issued in this state or the financial condition of any society;

(b) any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

(c) any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture, or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it:

(i) does not compare in detail:

(A) the gross rates and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

(B) any increase in cash values and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or

(ii) omits from consideration:

(A) any benefit or value provided in the contract;

(B) any differences as to amount or period of rates; or

(C) any differences in limitations or conditions or provisions which directly or indirectly affect the benefits.

(2) In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

(3) Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation shall upon conviction be punished by a fine not less than $100 or more than $1,000 or by imprisonment in the county jail not less than 30 days or more than 90 days or both fine and imprisonment and shall in addition be liable for civil penalty in the amount of three times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

History: En. Sec. 663, Ch. 286, L. 1959; R.C.M. 1947, 40-5350.

33-7-519. Discrimination and rebates. (1) No society doing business in this state shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes.

(2) No society, by itself or any other party and no agent or solicitor, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any valuable consideration or inducement to or for insurance on any risk authorized to be taken by such society which is not specified in the certificate. No member shall receive or accept, directly or indirectly, any rebate of premium or

part thereof or agent's or solicitor's commission thereon payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on or any valuable consideration or inducement not specified in the contract of insurance.

History: En. Sec. 664, Ch. 286, L. 1959; R.C.M. 1947, 40-5351.

33-7-520 through 33-7-524 reserved.

33-7-525. Agent defined. The term "insurance agent" as used in this chapter means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation, or procurement or making of a life insurance, accident and health insurance, or annuity contract. The term "insurance agent" shall not include:

(1) any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(2) any agent or representative of a society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of $50,000 or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefor shall be presumed to be devoting or intending to devote 50% of his time to the solicitation or procurement of insurance contracts for such society.

History: En. Sec. 657, Ch. 286, L. 1959; R.C.M. 1947, 40-5344(2).

33-7-526. Agent license required — penalty. (1) Agents of societies shall be licensed in accordance with the provisions of 33-7-525 through 33-7-528.

(2) No society doing business in this state shall pay any commission or other compensation to any person for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract, except to a licensed insurance agent of such society and except an agent exempted under 33-7-525.

(3) Any person who in this state acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall, except as provided in 33-7-525, be guilty of a misdemeanor.

History: (1)En. Sec. 657, Ch. 286, L. 1959; Sec. 40-5344, R.C.M. 1947; (2), (3)En. Sec. 658, Ch. 286, L. 1959; Sec. 40-5345, R.C.M. 1947; R.C.M. 1947, 40-5344(1), 40-5345.

33-7-527. Application — fee — examination not required — refusal to issue or renew. (1) The commissioner may issue an agent's license to any person who has paid an annual license fee of $5 and who has complied with the requirements of this section, authorizing such licensee to act as an insurance agent on behalf of any society named in such license which is authorized to do business in this state.

(2) Before any insurance agent's license shall be issued there shall be on file in the office of the commissioner the following documents:

(a) a written application by the prospective licensee in such form or forms and supplements thereto and containing such information as the commissioner may prescribe; and

(b) a certificate by the society which is to be named in such license, stating that such society has satisfied itself that the named applicant is trustworthy and competent to act as such insurance agent and that the society will appoint such applicant to act as its agent if the license applied for is issued by the commissioner. Such certificates shall be executed and acknowledged by an officer or managing agent of such society.

(3) No written or other examination shall be required of any individual seeking to be named as a licensee to represent a fraternal benefit society as its agent.

(4) The commissioner may refuse to issue or renew any insurance agent's license if in his judgment the proposed licensee is not trustworthy and competent to act as such agent, has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance or renewal, as the case may be, of such license.

History: En. Sec. 659, Ch. 286, L. 1959; R.C.M. 1947, 40-5346.

33-7-528. Expiration — renewal — hearing on refusal. (1) Every agent's license and every renewal thereof shall expire on December 31 of the even-numbered calendar year following the calendar year in which such license or renewal license was issued.

(2) Any such renewal license of an insurance agent may be issued upon the application of the society named in the existing license. Such application shall be in the form or forms prescribed by the commissioner and shall contain such information as he may require. The application shall contain a certificate executed by the president or by a vice-president, a secretary, an assistant secretary, or corresponding officer by whatever name known or by an employee expressly designated and authorized to execute such certificate of a domestic or foreign society or by the United States manager of an alien society, stating that the addresses therein given of the agents of such society for whom renewal licenses are requested therein have been verified in each instance immediately preceding the preparation of the application. Notwithstanding the filing of such application, the commissioner may, after reasonable notice to any such society, require that any or all agents of such society to be named as licensees in renewal licenses shall execute and file separate applications for the renewal of such licenses, as hereinbefore specified, and he may also require that each such application shall be accompanied by the certificate specified in 33-7-527(2)(b).

(3) If the application for a renewal license has been filed with the commissioner on or before December 31 of the year in which the existing license is to expire, such applicant named in such existing license may continue to act as insurance agent under such existing license, unless same shall be revoked or suspended, until the issuance by the commissioner of the renewal license or until the expiration of 5 days after he has refused to renew such license and has served written notice of such refusal on the applicant.

(4) If the applicant shall, within 30 days after such notice is given, notify the commissioner in writing of his request for a hearing on such refusal, the commissioner shall, within a reasonable time after receipt of such notice, grant such hearing, and he may, in his discretion, reinstate such license.

History: En. Sec. 660, Ch. 286, L. 1959; R.C.M. 1947, 40-5347.

33-7-529. Suspension or revocation. (1) The commissioner may revoke or may suspend for such period as he may determine any insurance agent's license if, after notice and hearing as specified in (3) and (4) of 33-7-528, he determines that the licensee has:

(a) violated any provision of or any obligation imposed by this chapter or has violated any law in the course of his dealings as agent;

(b) made a material misstatement in the application for such license;

(c) been guilty of fraudulent or dishonest practices;

(d) demonstrated his incompetency or untrustworthiness to act as an insurance agent; or

(e) been guilty of rebating as defined by the laws of this state applicable to life insurers.

(2) The revocation or suspension of any agent's license shall terminate forthwith the license of such agent.

(3) No individual whose license has been revoked shall be entitled to obtain any insurance agent's license under the provisions of this chapter for a period of 1 year after such revocation or, if such revocation be judicially reviewed, for 1 year after the final determination thereof affirming the action of the commissioner in revoking such license.

History: En. Sec. 662, Ch. 286, L. 1959; R.C.M. 1947, 40-5349.

33-7-530. Notice of termination by society. Every society shall, upon the termination of the appointment of any insurance agent licensed to represent it in this state, forthwith file with the commissioner a statement, in such form as he may prescribe, of the facts relative to such termination and the cause thereof. Every statement made pursuant to this section shall be deemed a privileged communication.

History: En. Sec. 661, Ch. 286, L. 1959; R.C.M. 1947, 40-5348.

CHAPTER 8

JOINT UNDERWRITING ASSOCIATIONS

Part 1 — Medical Liability

Section
33-8-101. Purpose.
33-8-102. Definitions.
33-8-103. Joint underwriting association — determination of unavailability of insurance.
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33-8-114. Examinations of association's affairs.

Part 1

Medical Liability

33-8-101. Purpose. The legislature finds that a crisis exists because of the high cost and impending unavailability of medical liability insurance. The purpose of this part is to provide an interim solution to the unavailability of such insurance. This legislation will not resolve the underlying causes of the unavailability and high cost, which extend beyond the insurance mechanism. It is anticipated that future legislation will deal on a more permanent basis with the root causes of the current crisis. Accordingly, this part is enacted for a limited period of time.

History: En. 40-6001 by Sec. 1, Ch. 246, L. 1977; R.C.M. 1947, 40-6001.

33-8-102. Definitions. As used in this part, the following definitions apply:

(1) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering professional service by a licensed physician or a hospital, hospital-related facility, or long-term care facility, as defined by 50-5-101.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this part.

(3) "Net direct premiums" means gross direct premiums on personal injury liability insurance written pursuant to the provisions of the insurance laws of Montana, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums or the unused or unabsorbed portions of premium deposits.

History: En. 40-6002 by Sec. 2, Ch. 246, L. 1977; R.C.M. 1947, 40-6002.

33-8-103. Joint underwriting association — determination of unavailability of insurance. (1) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing within this state on a direct basis insurance against legal liability for the death, injury, or disability of any person pursuant to the provisions of Title 33, including insurers covering the perils in multiple peril package policies. Each of these insurers shall be a member of the association and shall remain a member as a condition of its authority to continue to transact this kind of insurance in this state. The purpose of the association is to provide medical liability insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for physicians until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.

(3) The association may not commence underwriting operations for hospitals, hospital-related facilities, or long-term care facilities until the commissioner, after due hearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals, hospital-related facilities, or long-term care facilities but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.

(4) If the commissioner determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals, hospital-related facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the voluntary market.

History: En. 40-6003 by Sec. 3, Ch. 246, L. 1977; R.C.M. 1947, 40-6003(1) thru (4).

33-8-104. Authority to issue policies. The association has, pursuant to the provisions of this part and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:

(1) subject to limits as specified in the plan of operation but not to exceed $1 million for each claimant under one policy and $3 million for all claimants under one policy in any one year, issue or cause to be issued policies of insurance to applicants, including incidental coverages;

(2) underwrite the insurance and assume reinsurance from its members; and

(3) cede reinsurance.

History: En. 40-6003 by Sec. 3, Ch. 246, L. 1977; R.C.M. 1947, 40-6003(5).

33-8-105. Plan of operation — submission — amendment. (1) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner for his review a proposed plan of operation consistent with the provisions of this part to be fully effective and operative upon order of the commissioner.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance and shall contain other provisions including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall provide that any profit achieved by the association be added to the reserves of the association or returned to the policyholders as a dividend.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner, or shall be made at the direction of the commissioner.

History: En. 40-6003 by Sec. 3, Ch. 246, L. 1977; R.C.M. 1947, 40-6003(6).

33-8-106. Application. (1) A licensed physician or hospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of professional liability insurance for a term of 1 year.

History: En. 40-6004 by Sec. 4, Ch. 246, L. 1977; R.C.M. 1947, 40-6004(1).

33-8-107. Rates — approval — recoupment. (1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto are subject to the insurance laws of Montana, giving due consideration to the past and prospective loss and expense experience for medical liability insurance of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner may require.

(2) Within such time as the commissioner directs, the association shall submit for the approval of the commissioner an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical

liability insurance to be written by the association. In the event the commissioner disapproves the initial filing, in whole or in part, the association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to approve the filing or amended filing within the time specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in writing such insurance.

(3) Any deficit sustained by the association in any one year shall be recouped pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

(a) an assessment upon the policyholders; or

(b) a rate increase applicable prospectively.

(4) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase shall be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner considers appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (4) of this section, all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in this section. Contributions shall be reimbursed to the members following recoupment as provided in subsection (4) of this section.

History: En. 40-6004 by Sec. 4, Ch. 246, L. 1977; R.C.M. 1947, 40-6004(2)(a) thru (e).

33-8-108. Claims made and occurrence-based policies. The commissioner shall consider requiring the association to offer policies on both a claims made and occurrence basis so that applicants may select either policy at their option. However, the premium rate charged for both claims made and occurrence policies shall be at rates established on an actuarially sound basis and which are calculated to be self-supporting.

History: En. 40-6004 by Sec. 4, Ch. 246, L. 1977; R.C.M. 1947, 40-6004(2)(f).

33-8-109. Financial participation. (1) All insurers which are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bear to the aggregate net direct premiums written in this state by all members of the association.

(2) Each insurer's participation in the association shall be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner.

(3) No member is obligated in any one year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of 1% of its surplus to policyholders, and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit shall be allocated to

each member in accordance with the method of determining participation prescribed in this section.

History: **En. 40-6005 by Sec. 5, Ch. 246, L. 1977; R.C.M. 1947, 40-6005.**

33-8-110. Directors. The association shall be governed by a board of directors, to be elected annually. Eight directors shall be elected by cumulative voting of members of the association, whose votes shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors shall be appointed by the commissioner as representatives of the medical profession, the appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association shall be elected at a meeting of the members held at a time and place designated by the commissioner.

History: **En. 40-6006 by Sec. 6, Ch. 246, L. 1977; R.C.M. 1947, 40-6006.**

33-8-111. Appeals and judicial review. (1) With respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to this part, his representative, or an affected insurer may appeal to the commissioner within 30 days after a ruling action or decision by or on behalf of the association.

(2) All orders of the commissioner made pursuant to this part are subject to judicial review as provided in Title 33.

History: **En. 40-6007 by Sec. 7, Ch. 246, L. 1977; R.C.M. 1947, 40-6007.**

33-8-112. Privileged communications. There is no liability on the part of and no cause of action of any nature may arise against the association, its agents or employees, an insurer, a licensed agent or broker, or the commissioner or his authorized representatives for any statements made in good faith by them in any reports or communications concerning risks insured or to be insured by the association or at any administrative hearings conducted in connection therewith.

History: **En. 40-6008 by Sec. 8, Ch. 246, L. 1977; R.C.M. 1947, 40-6008.**

33-8-113. Annual statements. The association shall file in the office of the commissioner annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement shall contain the matters and information prescribed and shall be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

History: **En. 40-6009 by Sec. 9, Ch. 246, L. 1977; R.C.M. 1947, 40-6009.**

33-8-114. Examinations of association's affairs. The commissioner shall make an examination into the affairs of the association at least annually. The examination shall be conducted and the report thereon filed in the manner provided by law. The expenses of every examination shall be borne and paid by the association in the manner prescribed by law.

History: **En. 40-6010 by Sec. 10, Ch. 246, L. 1977; R.C.M. 1947, 40-6010.**

CHAPTER 9

PROFESSIONAL LIABILITY INSURANCE

Part 1 — General Provisions

Section
33-9-101. Definitions.
33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers.
33-9-103. Incorporation and regulation.
33-9-104. Initial qualifications.
33-9-105. Foreign or alien insurers — certification.

Part 1

General Provisions

33-9-101. Definitions. As used in this part, the following definitions apply:

(1) "Health care provider" means any person, corporation, facility, or institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to physician, osteopath, registered nurse, licensed practical nurse, dentist, optometrist, podiatrist, hospital, hospital-related facility, or long-term care facility.

(2) "Other professional" means an attorney, certified public accountant, public accountant, architect, veterinarian, pharmacist, and professional engineer licensed or otherwise legally authorized by a state to render professional services.

History: En. 40-4759 by Sec. 1, Ch. 119, L. 1977; R.C.M. 1947, 40-4759(intro.), (2), (3).

33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether such mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting himself by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional.

History: En. 40-4760 by Sec. 2, Ch. 119, L. 1977; R.C.M. 1947, 40-4760.

33-9-103. Incorporation and regulation. A domestic mutual, stock, or reciprocal insurer, organized for the purpose of transacting insurance business as set forth in 33-9-102, shall organize under the provisions of Title 33 and be regulated as therein provided. The provisions of this part govern whenever in conflict with other laws or parts of laws of any state.

History: En. 40-4761 by Sec. 3, Ch. 119, L. 1977; R.C.M. 1947, 40-4761.

33-9-104. Initial qualifications. No original certificate of authority for a mutual, stock, or reciprocal insurer may be issued by the commissioner until applications representing 250 members of the profession under consideration have been received by the commissioner or in the case of health care providers that are hospitals, hospital-related facilities, or long-term care facilities, applications representing 50% of the beds in the state or states affected, and until the commissioner has determined that such insurer or insurers have bona fide applications representing the number of applicants required.

History: En. 40-4762 by Sec. 4, Ch. 119, L. 1977; R.C.M. 1947, 40-4762.

33-9-105. Foreign or alien insurers — certification. Any mutual, stock, or reciprocal insurer organized under the laws of another state substantially similar to this part for the purpose of transacting the kind of business described in this part may, upon an application and without prior operating experience or examination, be admitted to solicit applications. If the necessary number of applications is obtained, the insurer may do business in this state if the commissioner finds such admission is in the public interest. Thereafter the insurer shall make all reports and be subject to taxation, examination, and supervision by the commissioner to the same extent and in the same manner as are other foreign or alien insurers.

History: En. 40-4763 by Sec. 5, Ch. 119, L. 1977; R.C.M. 1947, 40-4763.

CHAPTER 10

INSURANCE GUARANTY ASSOCIATIONS

Part 1 — Casualty and Property Insurance Guaranty Associations

Section

33-10-101. Short title, purpose, scope, and construction.
33-10-102. Definitions.
33-10-103. Creation of the association.
33-10-104. Board of directors — commissioner approval — compensation.
33-10-105. General powers and duties.
33-10-106. Plan of operation — delegation to other organization.
33-10-107. Tax exemption.
33-10-108. Prevention of insolvencies — directors' and commissioner's action.
33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner.
33-10-110. Immunity.
33-10-111. Stay of proceedings — reopening of default judgments.
33-10-112. Examination of association.
33-10-113. Claims — notice.
33-10-114. Claims — effect as to insured and receiver.
33-10-115. Recovery — sequence — nonduplication.
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Part 2 — Life and Health Insurance Guaranty Associations

33-10-201. Short title, purpose, scope, and construction.
33-10-202. Definitions.
33-10-203. Creation of the association — accounts — supervision by commissioner.
33-10-204. Board of directors — commissioner approval — compensation.
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33-10-210. Unfair trade practice.
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33-10-216. Plan of operation — delegation of powers provision.
33-10-217. Prevention of impairments.
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33-10-219. Impaired insurer — association's powers prior to liquidation.
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33-10-221. Nomination of liquidator by association — notification given by liquidator.
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33-10-225. Association as creditor — use of assets.
33-10-226. Distribution of ownership rights — distribution to shareholders.
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33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions.
33-10-229. Recovery of dividends.
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Part 1

Casualty and Property Insurance Guaranty Associations

33-10-101. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act".

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty, and ocean marine insurance.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation.

History: En. Secs. 1, 2, 3, 4, Ch. 63, L. 1971; R.C.M. 1947, 40-5701, 40-5702, 40-5703, 40-5704.

33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) "Covered claim" shall not include any amount due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means any person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization.

History: En. Sec. 5, Ch. 63, L. 1971; R.C.M. 1947, 40-5705(1), (3) thru (7).

33-10-103. Creation of the association. There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under 33-10-106 and shall exercise its powers through a board of directors established under 33-10-104.

History: En. Sec. 6, Ch. 63, L. 1971; R.C.M. 1947, 40-5706.

33-10-104. Board of directors — commissioner approval — compensation. (1) The board of directors of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. Sec. 7, Ch. 63, L. 1971; R.C.M. 1947, 40-5707(part).

33-10-105. General powers and duties. (1) The association shall:

(a) be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of $100 and is less than $300,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases, and judgments may be properly contested;

(d) notify such persons as the commissioner directs under 33-10-109(2)(a);

(e) handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(f) reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to such contracts as are necessary to carry out the purpose of this part;

(e) perform such other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(part).

33-10-106. Plan of operation — delegation to other organization. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) establish the procedures whereby all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;

(b) establish procedures for handling assets of the association;

(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;

(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;

(e) establish regular places and times for meetings of the board of directors;

(f) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(h) establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105(2)(b) and 33-10-116, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part).

33-10-107. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. Sec. 15, Ch. 63, L. 1971; R.C.M. 1947, 40-5715.

33-10-108. Prevention of insolvencies — directors' and commissioner's action. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: En. Sec. 13, Ch. 63, L. 1971; R.C.M. 1947, 40-5713.

33-10-109. Notice of insolvencies — suspension — other powers and duties of commissioner. (1) The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after he receives notice of the determination of the insolvency;

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(c) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part shall be subject to judicial review in a court of competent jurisdiction.

History: En. Sec. 10, Ch. 63, L. 1971; R.C.M. 1947, 40-5710.

33-10-110. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 17, Ch. 63, L. 1971; R.C.M. 1947, 40-5717.

33-10-111. Stay of proceedings — reopening of default judgments. (1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for 60 days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits.

History: En. Sec. 18, Ch. 63, L. 1971; R.C.M. 1947, 40-5718.

33-10-112. Examination of association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. Sec. 14, Ch. 63, L. 1971; R.C.M. 1947, 40-5714.

33-10-113. Claims — notice. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

History: En. Sec. 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709(part).

33-10-114. Claims — effect as to insured and receiver. (1) Any person recovering under this part shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. Sec. 11, Ch. 63, L. 1971; R.C.M. 1947, 40-5711.

33-10-115. Recovery — sequence — nonduplication. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. Sec. 12, Ch. 63, L. 1971; R.C.M. 1947, 40-5712.

33-10-116. Assessment. (1) The association shall assess insurers amounts necessary to pay the obligations of the association under 33-10-105(1)(a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under 33-10-108, and other expenses authorized by this part.

(2) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than 2% of that member insurer's net direct written premiums for the preceding calendar year.

(3) If the maximum assessment together with the other assets of the association does not provide in any one year an amount sufficient to make all necessary pay-

ments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(4) The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

(5) Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

History: En. Sec. 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(1)(c).

33-10-117. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this part applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. Sec. 16, Ch. 63, L. 1971; R.C.M. 1947, 40-5716.

Part 2

Life and Health Insurance Guaranty Associations

33-10-201. Short title, purpose, scope, and construction. (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(5) This part shall not apply to:

(a) any such policies or contracts or any part of such policies or contracts under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(6) This part shall be liberally construed to effect the purpose under subsections (2) and (3) which shall constitute an aid and guide to interpretation.

(7) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

History: (1)En. 40-5801 by Sec. 1, Ch. 245, L. 1974; Sec. 40-5801, R.C.M. 1947; (2), (3)En. 40-5802 by Sec. 2, Ch. 245, L. 1974; Sec. 40-5802, R.C.M. 1947; (4), (5)En. 40-5803 by Sec. 3, Ch. 245, L. 1974; Sec. 40-5803, R.C.M. 1947; (6)En. 40-5804 by Sec. 4, Ch. 245, L. 1974; Sec. 40-5804, R.C.M. 1947; (7)En. 40-5814 by Sec. 14, Ch. 245, L. 1974; Sec. 40-5814, R.C.M. 1947; R.C.M. 1947, 40-5801, 40-5802, 40-5803, 40-5804, 40-5814(1).

33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) and (5) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction; or

(b) an insurer deemed by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (5) of 33-10-201.

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

History: En. 40-5805 by Sec. 5, Ch. 245, L. 1974; R.C.M. 1947, 40-5805(1), (2), (4) thru (10).

33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain three accounts:

(a) the health insurance account;

(b) the life insurance account; and

(c) the annuity account.

(3) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

History: En. 40-5806 by Sec. 6, Ch. 245, L. 1974; R.C.M. 1947, 40-5806.

33-10-204. Board of directors — commissioner approval — compensation. (1) The board of directors of the association shall consist of five members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(2) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

History: En. 40-5807 by Sec. 7, Ch. 245, L. 1974; R.C.M. 1947, 40-5807(part).

33-10-205. General powers of association — standing. (1) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under 33-10-227;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

(2) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(3) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(7), (8), (11).

33-10-206. Records of meetings and negotiations. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under this part. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the association to render a report of its activities under 33-10-209.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(2).

33-10-207. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. 40-5818 by Sec. 18, Ch. 245, L. 1974; R.C.M. 1947, 40-5818.

33-10-208. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real property.

History: En. 40-5816 by Sec. 16, Ch. 245, L. 1974; R.C.M. 1947, 40-5816.

33-10-209. Examination of the association — annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: En. 40-5815 by Sec. 15, Ch. 245, L. 1974; R.C.M. 1947, 40-5815.

33-10-210. Unfair trade practice. It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(5).

33-10-211 through 33-10-214 reserved.

33-10-215. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1) notify the board of directors of the existence of an impaired insurer not later than 3 days after a determination of impairment is made or he receives notice of impairment;

(2) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this part.

(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(1).

33-10-216. Plan of operation — delegation of powers provision. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-205(1)(c) and 33-10-227, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. 40-5810 by Sec. 10, Ch. 245, L. 1974; R.C.M. 1947, 40-5810.

33-10-217. Prevention of impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(4) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(5) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part).

33-10-218. Examination by commissioner — cost. (1) The commissioner may conduct the examination requested by the board pursuant to 33-10-217(2). The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports.

(2) In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (4). The commissioner shall notify the board of directors when the examination is completed.

(3) The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(4) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

History: En. 40-5812 by Sec. 12, Ch. 245, L. 1974; R.C.M. 1947, 40-5812(part).

33-10-219. Impaired insurer — association's powers prior to liquidation. (1) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer;

(b) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a) and assure payment of the contractual obligations of the impaired insurer pending action under subsection (a);

(c) loan money to the impaired insurer.

(2) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation, or conservation, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure or cause to be guaranteed, assumed, or reinsured the impaired insurer's covered policies of residents;

(b) provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a) and assure payment of the impaired insurer's contractual obligations to residents pending action under subsection (a);

(c) loan money to the impaired insurer.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(1), (2).

33-10-220. Impaired insurer — association's powers during liquidation. (1) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) assure payment of the contractual obligations of the impaired insurer to residents; and

(c) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(3) If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this part with respect to such domestic, foreign, or alien impaired insurer.

(4) In carrying out its duties under subsections (1) and (2), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and such liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts which can be assessed under this part are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(5) Before being obligated under subsections (1) and (2), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(6) The association shall have no liability under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(3) thru (6).

33-10-221. Nomination of liquidator by association — notification given by liquidator. (1) The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or conservation of any member insurer.

(2) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this part.

History: (1)En. 40-5813 by Sec. 13, Ch. 245, L. 1974; Sec. 40-5813, R.C.M. 1947; (2)En. 40-5811 by Sec. 11, Ch. 245, L. 1974; Sec. 40-5811, R.C.M. 1947; R.C.M. 1947, 40-5811(4), 40-5813.

33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: En. 40-5819 by Sec. 19, Ch. 245, L. 1974; R.C.M. 1947, 40-5819.

33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(2) The subrogation rights of the association under this section shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this part.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(9).

33-10-224. Extent of liability. The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(4), but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of $300,000.

History: En. 40-5808 by Sec. 8, Ch. 245, L. 1974; R.C.M. 1947, 40-5808(10).

33-10-225. Association as creditor — use of assets. (1) For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to 33-10-223.

(2) All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this part. Assets attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(3).

33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the impaired insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(4).

33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under 33-10-219(1) and 33-10-220(1) with regard to an impaired domestic insurer.

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under 33-10-219(2) and 33-10-220(2) with regard to an impaired foreign or alien insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by such insurer on all covered policies.

(b) Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to such premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bear to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bear to such premiums received on business in each state by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this part.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(8) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

History: En. 40-5809 by Sec. 9, Ch. 245, L. 1974; R.C.M. 1947, 40-5809.

33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions. (1) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5% of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(2) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

History: En. 40-5811 by Sec. 11, Ch. 245, L. 1974; R.C.M. 1947, 40-5811(2), (3).

33-10-229. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (2) through (4).

(2) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who as an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(5) If any person liable under subsection (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: En. 40-5814 by Sec. 14, Ch. 245, L. 1974; R.C.M. 1947, 40-5814(6).

33-10-230. Tax — writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to 33-10-227(8), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(a) 100% for calendar year of issuance;
(b) 80% for the first calendar year after year of issuance;
(c) 60% for second calendar year after year of issuance;
(d) 40% for third calendar year after year of issuance;
(e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in such year.

(3) Any sums acquired by refund, pursuant to 33-10-227(6), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes for this part shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

History: En. 40-5817 by Sec. 17, Ch. 245, L. 1974; R.C.M. 1947, 40-5817.

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

THE INSURANCE CONTRACT

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Part 1

Scope and Definitions

33-15-101. Scope. This chapter shall not apply as to:

(1) reinsurance;

(2) policies or contracts not issued for delivery in this state or delivered in this state;

(3) ocean marine and foreign trade insurances;

(4) title insurance, except as to the following provisions: 33-15-103, 33-15-305, 33-15-306, and 33-15-316.

History: En. Sec. 258, Ch. 286, L. 1959; R.C.M. 1947, 40-3701.

33-15-102. Definitions. (1) "Premium" is the consideration for insurance, by whatever name called. Any assessment or membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

(2) "Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached thereto and a part thereof.

History: En. Secs. 259, 260, Ch. 286, L. 1959; R.C.M. 1947, 40-3702, 40-3703.

33-15-103. Power to contract — purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights

and powers with respect to or under any contract for annuity or for insurance upon his own life, body, or health or any contract such minor effected upon his own property, liabilities, or other interests or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any such annuity or insurance contract.

(3) If any minor mentioned in subsection (2) above is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums except as and when consented to by the guardian and approved by the probate court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) above shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor under 33-15-201.

History: En. Sec. 267, Ch. 286, L. 1959; R.C.M. 1947, 40-3710.

Part 2

Insurable Interests

33-15-201. Restrictions on contracting for personal insurance — insurable interests — violation. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in such shares has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

History: En. Sec. 261, Ch. 286, L. 1959; R.C.M. 1947, 40-3704.

33-15-202 through 33-15-204 reserved.

33-15-205. Restrictions on property insurance — interest. (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

History: En. Sec. 262, Ch. 286, L. 1959; R.C.M. 1947, 40-3705.

33-15-206. Interest of named insured — change of interest on death — transfer. (1) When the name of the person insured is specified in a policy insuring property, the insurance can be applied only to his own proper interest.

(2) A change of interest, by will or succession, on the death of the insured does not avoid an insurance of property, and the insurance passes to the person taking his interest in the thing insured.

(3) A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others does not avoid an insurance of property even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

History: En. Secs. 263, 264, 265, Ch. 286, L. 1959; R.C.M. 1947, 40-3706, 40-3707, 40-3708.

33-15-207. Insurance without interest or of wager — void. (1) Every stipulation in a policy of insurance of property for the payment of loss without regard to absence of an insurable interest in such property on the part of the insured or that the policy shall be received as proof of such interest is void.

(2) Every policy executed by way of gaming or wagering is void.

History: En. Sec. 266, Ch. 286, L. 1959; R.C.M. 1947, 40-3709.

Part 3

Policy Provisions

33-15-301. Requiring standard provisions — waiver. (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular provision in a particular insurance policy form if:

(a) he finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy; and

(b) the policy is otherwise approved by him.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

(4) No such provision, if required to be contained in the policy, can be waived by agreement between the insurer and any other person.

History: En. Sec. 273, Ch. 286, L. 1959; R.C.M. 1947, 40-3716.

33-15-302. Policy must contain entire contract. The policy, when issued, shall contain the entire contract between the parties, and neither the insurer or any agent or representative thereof nor any person insured thereunder shall make any agreement as to the insurance which is not plainly expressed in the policy. This provision shall not be deemed to prohibit the modification of a policy, after issuance, by written rider or endorsement duly issued by the insurer.

History: En. Sec. 274, Ch. 286, L. 1959; R.C.M. 1947, 40-3717.

33-15-303. Contents of policies in general — identification. (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance thereunder takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

(3) Subsections (1) and (2) of this section shall not apply as to surety contracts or to group insurance policies.

(4) All policies and annuity contracts issued by domestic insurers and the forms thereof filed with the commissioner shall have printed thereon an appropriate designating letter or figure or combination of letters or figures or terms identifying the respective forms of policies or contracts, together with the year of adoption of such form. Whenever any change is made in any such form, the designating letters, figures, or terms and year of adoption thereon shall be correspondingly changed.

History: En. Sec. 275, Ch. 286, L. 1959; R.C.M. 1947, 40-3718.

33-15-304. Permissible content. A policy may contain additional provisions not inconsistent with this code and which are:

(1) required to be inserted by the laws of the insurer's domicile;

(2) necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) desired by the insurer and neither prohibited by law nor in conflict with any provisions required to be included therein.

History: En. Sec. 276, Ch. 286, L. 1959; R.C.M. 1947, 40-3719.

33-15-305. Prohibited content — charter or bylaws. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer, other than the subscribers' agreement or power of attorney of a reciprocal insurer, a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

History: En. Sec. 277, Ch. 286, L. 1959; R.C.M. 1947, 40-3720.

33-15-306. Execution of policies — facsimile signature. (1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney-in-fact, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

History: En. Sec. 278, Ch. 286, L. 1959; R.C.M. 1947, 40-3721.

33-15-307. Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue and shall be jointly and severally liable on an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department, and such policy shall plainly show the true name of the insurer.

(2) Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

(a) that the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy; and

(b) that service of process or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to cosurety obligations.

History: En. Sec. 279, Ch. 286, Ch. 1959; R.C.M. 1947, 40-3722.

33-15-308 through 33-15-314 reserved.

33-15-315. Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.

History: En. Sec. 281, Ch. 286, L. 1959; R.C.M. 1947, 40-3724.

33-15-316. Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application which is a part of the policy.

History: En. Sec. 282, Ch. 286, L. 1959; R.C.M. 1947, 40-3725.

Part 4

Application, Issuance, Renewal, and Assignment

33-15-401. Application required — life and disability insurance. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto in writing, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance may effectuate insurance upon the life of or pertaining to such minor.

(3) Family policies insuring any two or more members of a family may be issued on an application signed by either parent, a stepparent, or by a husband or wife.

History: En. Sec. 268, Ch. 286, L. 1959; R.C.M. 1947, 40-3711.

33-15-402. Application as evidence — copy to insured — alteration. (1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within 30 days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such request from a beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for if the insurer has failed, at expiration of 30 days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

(4) No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

History: En. Sec. 269, Ch. 286, L. 1959; R.C.M. 1947, 40-3712.

33-15-403. Representations in applications — recovery precluded if fraudulent or material. (1) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations therefor by or in behalf of the insured or annuitant shall be deemed to be representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(a) fraudulent;

(b) material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(c) the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

History: En. Sec. 270, Ch. 286, L. 1959; R.C.M. 1947, 40-3713.

33-15-404 through 33-15-410 reserved.

33-15-411. Binders for temporary insurance. (1) Binders or other contracts for temporary insurance may be made orally or in writing and shall be deemed to include all the usual terms of the policy as to which the binder was given, together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

(2) No binder shall be valid beyond the issuance of the policy with respect to which it was given or beyond 90 days from its effective date, whichever period is the shorter.

(3) If the policy has not been issued, a binder may be extended or renewed beyond such 90 days with the written approval of the insurer.

(4) This section shall not apply to life or disability insurance.

History: En. Sec. 283, Ch. 286, L. 1959; R.C.M. 1947, 40-3726.

33-15-412. Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the insured.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle or aircraft, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy or memorandum thereof containing the same such information shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum.

History: En. Sec. 284, Ch. 286, L. 1959; R.C.M. 1947, 40-3727.

33-15-413. Renewal by certificate. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor, for a specific additional period or periods by certificate or by endorsement of the policy, and without requiring the issuance of a new policy.

History: En. Sec. 285, Ch. 286, L. 1959; R.C.M. 1947, 40-3728.

33-15-414. Assignment. (1) A policy or group certificate issued thereunder may be assignable or not assignable, as provided by its terms.

(2) Subject to its terms relating to the assignability, any life or disability policy or group certificate under either, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an

assignment executed by the insured or owner, alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

(3) An assignment valid hereunder may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy or group certificate, including but not limited to the rights to designate beneficiaries and of a group certificate holder to have an individual policy issued in accordance with 33-20-1209 and 33-20-1210. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment; provided, however, that the insurer shall not be prejudiced by any payment made or action taken inconsistent with the terms of any assignment before the insurer has received and had reasonable time to act on written notice of such assignment.

(4) This section acknowledges, declares, and codifies the existing right of assignment of interests under insurance policies. An assignment otherwise valid shall not be invalid because it was made prior to July 1, 1971.

History: En. Sec. 286, Ch. 286, L. 1959; amd. Sec. 1, Ch. 167, L. 1971; R.C.M. 1947, 40-3729.

Part 5

Claims and Benefits

33-15-501. Payment discharges insurer — notice to contrary. Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract or the exercise of any right or privilege thereunder and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

History: En. Sec. 287, Ch. 286, L. 1959; R.C.M. 1947, 40-3730.

33-15-502. Minor may give acquittance. (1) Any minor domiciled in this state who has attained the age of 16 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding $3,000 in any one year made by a life insurer under the maturity, death, or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, provided such policy, contract, or agreement shall provide for the payment or payments to such minor and if prior to such payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. No such minor shall be deemed competent to alienate the right to or to anticipate such payments. This section shall not be deemed to restrict the rights of minors set forth in 33-15-103.

(2) This section shall not be deemed to require any insurer to determine whether any other insurer may be effecting a similar payment to the same minor.

History: En. Sec. 288, Ch. 286, L. 1959; R.C.M. 1947, 40-3731.

33-15-503. Forms for proof of loss to be furnished. An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

History: En. Sec. 289, Ch. 286, L. 1959; R.C.M. 1947, 40-3732.

33-15-504. Claims administration not waiver. Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) acknowledgment of the receipt of notice of loss or claim under the policy;

(2) furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted;

(3) investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

History: En. Sec. 290, Ch. 286, L. 1959; R.C.M. 1947, 40-3733.

33-15-505 through 33-15-510 reserved.

33-15-511. Exemption from execution of life insurance proceeds. (1) If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of a person other than himself or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or executors or administrators of such insured or the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; except that, subject to the statute of limitations, the amount of any premiums for such insurance paid with intent to defraud creditors with interest thereon shall enure to their benefit from the proceeds of the policy, but the insurer issuing the policy shall be discharged of all liability thereof by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount so claimed.

(2) For the purposes of subsection (1) above, a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

History: En. Sec. 291, Ch. 286, L. 1959; R.C.M. 1947, 40-3734.

33-15-512. Exemption from execution of proceeds of group life — exception. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of such insured individual or his beneficiary or of any other person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance issued pursuant to parts 10, 11, and 12 of chapter 20 to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued.

History: En. Sec. 292, Ch. 286, L. 1959; R.C.M. 1947, 40-3735.

33-15-513. Exemption from execution of proceeds of disability insurance. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured and from any debt of the beneficiary existing at the time the proceeds are made available for his use.

History: En. Sec. 293, Ch. 286, L. 1959; R.C.M. 1947, 40-3736.

33-15-514. Exemption from execution of proceeds of annuity contracts — assignability of rights. (1) The benefits, rights, privileges, and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant shall not be subject to execution, nor shall the annuitant be compelled to exercise any such rights, powers, or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

(a) as to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant, and the payments sought to be avoided on the ground of fraud.

(b) the total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant shall not at any time exceed $250 per month for the length of time represented by such installments and that such periodic payments in excess of $350 per month shall be subject to garnishee execution;

(c) if the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant shall at any time exceed payment at the rate of $350 per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) If the contract so provides, the benefits, rights, privileges, or options accruing under such contract to a beneficiary or assignee shall not be transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions contained herein for the annuitant shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not

include payments under life insurance contracts at stated times during life or lives or for a specified term or terms.

History: **En. Sec. 294, Ch. 286, L. 1959; R.C.M. 1947, 40-3737.**

CHAPTER 16

RATES — RATING AND ADVISORY ORGANIZATIONS

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Part 1

General Provisions

33-16-101. Purpose and intent. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in ratemaking and other related matters.

(2) It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969; R.C.M. 1947, 40-3634.

33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans, or rating systems or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

(2) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

(3) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans, or rating systems and which do not operate within the specific authorizations contained in

33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(4) "Subscriber" means an insurer which is furnished at its request with rates and rating manuals by a rating organization of which it is not a member or with advisory services by an advisory organization of which it is not a member.

(5) "Willful" or "willfully", in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: En. Secs. 2, 3, 4, 5, Ch. 362, L. 1969; R.C.M. 1947, 40-3635, 40-3636, 40-3637, 40-3638.

33-16-103. Application. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

(1) life insurance;

(2) disability insurance;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(6) title insurance.

History: En. Sec. 6, Ch. 362, L. 1969; amd. Sec. 1, Ch. 558, L. 1977; R.C.M. 1947, 40-3639.

33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system.

History: En. Sec. 33, Ch. 362, L. 1969; R.C.M. 1947, 40-3666.

33-16-105. Maintenance of records. Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(1).

33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, agents, and employees — expense. (1) (a) The commissioner shall, at least once every 5 years, and may as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization. He may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance.

(b) In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether such organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, agents, and employees of any such organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by such organization, group, association, or insurer in the conduct of the operations to which such examination relates.

(4) The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association, or insurer to be examined.

History: En. Secs. 22, 23, 24, 25, Ch. 362, L. 1969; R.C.M. 1947, 40-3655, 40-3656, 40-3657, 40-3658.

33-16-107. Information not to be willfully withheld. No person, insurer, or organization shall willfully withhold information from or knowingly give false or misleading information to the commissioner or to any rating organization, advisory organization, insurer, or group, association, or other organization of insurers which will affect the rates, rating systems, or premiums for the classes of insurance to which the provisions of this chapter are applicable.

History: En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(a).

33-16-108 through 33-16-110 reserved.

33-16-111. Issuance of order — suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which engages in joint underwriting or

joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).

33-16-112. Failure to comply with order — suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to 33-16-111 and 33-16-211 and effective pursuant to 33-16-113.

History: En. Sec. 30, Ch. 362, L. 1969; R.C.M. 1947, 40-3663.

33-16-113. Appeals from the commissioner. Any person, insurer, or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside or has his principal place of business in this state or to the district court of Lewis and Clark County, Montana. The appeal shall be taken within 30 days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within 20 days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969; R.C.M. 1947, 40-3664.

33-16-114. Penalty. (1) Any person, insurer, organization, group, or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding $50. If such failure be willful, he or it shall be liable to the state in an amount not exceeding $5,000 for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(2) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969; R.C.M. 1947, 40-3665(b), (c).

33-16-115. Acts done by authority of chapter not violation of other laws. No act done, action taken, or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969; R.C.M. 1947, 40-3667.

33-16-116. Administration or enforcement — supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969; R.C.M. 1947, 40-3668.

Part 2

Rates and Rating Plans

33-16-201. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

(b) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(c) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same or unless such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which such experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measur-

ing variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is 3 years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973; R.C.M. 1947, 40-3640.

33-16-202. Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969; R.C.M. 1947, 40-3669.

33-16-203. Rates filed. Every insurer shall file with the commissioner all rates that the insurer uses within this state.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(2).

33-16-204. Review of rates on request by aggrieved person. (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative and shall be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint

charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in 33-16-205.

History: En. Sec. 26, Ch. 362, L. 1969; R.C.M. 1947, 40-3659.

33-16-205. Noncompliance of rates — notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that such insurer, organization, group, or association or any rate, rating plan, or rating system made or used by any such insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group, or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206.

History: En. Sec. 27, Ch. 362, L. 1969; R.C.M. 1947, 40-3660.

33-16-206. Hearings — notice — subject of hearing. (1) If the commissioner has good cause to believe such noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than 10 days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group, or association. If no notice has been given as provided in 33-16-205, such notice shall state therein in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing shall not include any additional subjects not specified in the notices required by 33-16-205 or this section.

History: En. Sec. 28, Ch. 362, L. 1969; R.C.M. 1947, 40-3661.

33-16-207 through 33-16-210 reserved.

33-16-211. Issuance of order — suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662(part).

Part 3

Insurers Acting in Concert

33-16-301. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969; R.C.M. 1947, 40-3641.

33-16-302. Insurers with common ownership or cosureties on bond — acting in concert. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969; R.C.M. 1947, 40-3642.

33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations — agreements to adhere to. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and 33-16-1005 shall not agree with each other or rating organizations or others to adhere thereto.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization shall not be sufficient in itself to support a finding that an agreement to so adhere exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: En. Sec. 10, Ch. 362, L. 1969; amd. Sec. 2, Ch. 558, L. 1977; R.C.M. 1947, 40-3643.

33-16-304. Exchange of information or experience data — consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to ratemaking and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969; R.C.M. 1947, 40-3644.

33-16-305. Agreements for apportionment of casualty insurance — approval of commissioner — review of practices of adherents — revocation of approval. (1) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(2) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate:

(a) the use of rates which meet the standards prescribed by this chapter; and

(b) activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

(3) At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than 10 days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice. For good cause and after hearing upon not less than 10 days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: En. Sec. 12, Ch. 362, L. 1969; R.C.M. 1947, 40-3645.

33-16-306. Joint underwriters and reinsurers — compliance. Upon compliance with the provisions of this chapter applicable thereto, any rating organization, advisory organization, and any group, association, or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group, or association that has not complied with the provisions of this chapter applicable to it.

History: En. Sec. 13, Ch. 362, L. 1969; R.C.M. 1947, 40-3646.

33-16-307. Joint underwriting and joint reinsurance — application — restrictions on operations. (1) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization or by standing agreement among the members thereof, shall file with the commissioner:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such group, association, or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and its bylaws and rules governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association, or organization may be served.

(3) No such group, association, or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 20, Ch. 362, L. 1969; R.C.M. 1947, 40-3653.

33-16-308. Advisory organizations — application — requisites — restrictions on operations. (1) No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner:

(a) a copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws or rules governing its activities, all duly certified by the custodian of the originals thereof;

(b) a list of its members and subscribers; and

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

(2) Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(3) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969; R.C.M. 1947, 40-3652.

Part 4

Rating Organizations

33-16-401. Rating organizations — compliance — application. (1) No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter.

(2) Every such rating organization shall file with its application:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business, all duly certified by the custodian or the originals thereof;

(b) a list of its members and subscribers;

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969; R.C.M. 1947, 40-3647.

33-16-402. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(1) permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination or withdraw therefrom;

(2) neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms;

(3) neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(4) neither practice nor sanction any plan or act of boycott, coercion, or intimidation;

(5) neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business;

(6) notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served;

(7) comply with the provisions of 33-16-105 and 33-16-203.

History: En. Sec. 15, Ch. 362, L. 1969; R.C.M. 1947, 40-3648.

33-16-403. Examination of application and investigation of applicant — issuance of license — fee. (1) The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs, and its proposed plan of business as he deems desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be $100 annually which shall be deposited in the general fund.

History: En. Sec. 16, Ch. 362, L. 1969; amd. Sec. 1, Ch. 206, L. 1973; R.C.M. 1947, 40-3649.

33-16-404. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969; R.C.M. 1947, 40-3650.

33-16-405. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969; R.C.M. 1947, 40-3651.

Parts 5 through 9 reserved

Part 10

Workers' Compensation Rates and Rating Organizations

33-16-1001. Declaration of policy and purpose. (1) It is declared that the public welfare is served by the making of advisory premium rates for workers' compensation insurance coverage in concert.

(2) It is the purpose of this part to:

(a) authorize such ratemaking in concert and the operating of rating organizations thereto; and

(b) establish the general bases and standards for the making of such rates.

History: En. Sec. 1, Ch. 329, L. 1969; amd. Sec. 3, Ch. 558, L. 1977; R.C.M. 1947, 40-5601.

33-16-1002. Applicability of part. This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22.

History: En. Sec. 2, Ch. 329, L. 1969; amd. Sec. 4, Ch. 558, L. 1977; R.C.M. 1947, 40-5602.

33-16-1003. Certain reciprocal insurers excluded. This part shall not apply as to any reciprocal insurer transacting workers' compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969; R.C.M. 1947, 40-5603.

33-16-1004. Rates — considerations — methods — standards. All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(5) Except to the extent necessary to meet the provisions of subsections (1) through (3), uniformity among insurers in any matter within the scope of this section is neither required nor prohibited.

History: En. Secs. 4, 5, 6, Ch. 329, L. 1969; R.C.M. 1947, 40-5604, 40-5605, 40-5606.

33-16-1005. Membership in rating organization required — filings with commissioner. (1) Every insurer, including the division of workers' compensation, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization.

History: En. Sec. 16, Ch. 329, L. 1969; amd. Sec. 5, Ch. 558, L. 1977; R.C.M. 1947, 40-5616.

33-16-1006. Composition of rating organization. Such a rating organization shall have as members not less than five insurers authorized to write and writing workers' compensation insurance in this state and whose combined experience is determined by the commissioner to be reasonably adequate for ratemaking purposes.

History: En. Sec. 17, Ch. 329, L. 1969; R.C.M. 1947, 40-5617.

33-16-1007. Division of workers' compensation as member of committee on operation of rating organization — other members. In a rating organization of which the division of workers' compensation is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three members as herein provided for.

History: En. Sec. 18, Ch. 329, L. 1969; amd. Sec. 6, Ch. 558, L. 1977; R.C.M. 1947, 40-5618.

CHAPTER 17

AGENTS, SOLICITORS, ADJUSTERS, AND CONSULTANTS

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Part 1

General Provisions

33-17-101. Scope of chapter. This chapter shall apply as to all stock, mutual, and reciprocal insurers and as to all kinds of insurance and annuities.

History: En. Sec. 145, Ch. 286, L. 1959; R.C.M. 1947, 40-3301.

33-17-102. Definitions. (1) (a) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts.

(b) A licensed attorney at law who is qualified to practice law in this state, a salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer represented by such agent is not deemed to be an adjuster for the purposes of this chapter.

(2) An "agent" is an individual, firm, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(3) "Life insurance agent" includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities.

(4) A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

History: En. Secs. 146, 147, 148, 150, Ch. 286, L. 1959; R.C.M. 1947, 40-3302, 40-3303(part), 40-3304, 40-3306.

33-17-103. Exceptions and exemptions from definition of agent and solicitor. The definitions of agent and solicitor contained in 33-17-102 shall not be deemed to include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) the supervising general, state, or special agent or other supervising officer or supervising salaried employee of an insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services.

History: En. Sec. 149, Ch. 286, L. 1959; R.C.M. 1947, 40-3305.

Part 2

Licensing and Appointment of Agents and Solicitors

33-17-201. License required of agents and solicitors — forms. (1) No person shall in this state act as or hold himself out to be an agent or solicitor, as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(3) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

(4) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(5) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

History: En. Secs. 147, 151, Ch. 286, L. 1959; R.C.M. 1947, 40-3303(part), 40-3307.

33-17-202. General qualifications of resident agents and solicitors other than life insurance agents. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) must be 18 years of age or more;

(b) must be a resident in and of this state;

(c) if for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license;

(d) if for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation;

(e) must be competent, trustworthy, and of good reputation;

(f) must have had experience or training or be otherwise qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor;

(g) must pass any written examination for the license required under this chapter;

(h) must intend in good faith to act as and must act as and hold himself out to be an agent or solicitor in the active solicitation and negotiation of insurance with the general public and not seek or use the license for the negotiation or effectuation of insurance on his own property or interests or those of his relatives or of his employer. If during any calendar year more than 35% of the commissions earned or prospectively to be earned by such an applicant or licensee have been or probably will be derived from insurance of his own property or interests and those of his relatives and of his employer, the license will be deemed to have been used or to be intended to be used in violation of this subsection (h).

(2) In determining the qualifications as to competence, training, experience, and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests, and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

History: En. Sec. 152, Ch. 286, L. 1959; amd. Sec. 7, Ch. 44, L. 1969; amd. Sec. 5, Ch. 423, L. 1971; R.C.M. 1947, 40-3308.

33-17-203. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

(1) must be 18 years of age or more;

(2) must be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state;

(3) must have been appointed as such an agent by an authorized insurer, subject to issuance of the license;

(4) must be competent, trustworthy, and of good reputation;

(5) must have had experience or training or be otherwise adequately qualified in the kind or kinds of insurance as to which he is to be licensed, be reasonably familiar with the provisions of this code governing his operations as such an agent and with the provisions of the policies and contracts he proposes to offer under the license;

(6) must pass any written examination for the license required under this chapter;

(7) must not use or intend to use the license principally for the writing of insurance on the lives or interests of himself or his relatives to the second degree;

(8) must not be a funeral director, undertaker, or mortician or an officer, employee, or representative thereof.

History: En. Sec. 153, Ch. 286, L. 1959; amd. Sec. 8, Ch. 44, L. 1969; R.C.M. 1947, 40-3309.

33-17-204. Licensing of firms and corporations — requisites. (1) A firm or corporation shall be licensed only as an agent. If a firm, each general partner and each other individual to act for the firm under the license and, if a corporation, each individual to act for the corporation under the license shall be named in the license and shall qualify therefor as though an individual licensee. The commissioner shall charge and the licensee shall pay a full additional license fee as to each respective individual so named in such license in excess of two.

(2) A nonresident of Montana shall not be named in such license and shall not have the right to exercise the license powers.

(3) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state and unless the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(4) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

History: En. Sec. 154, Ch. 286, L. 1959; amd. Sec. 9, Ch. 44, L. 1969; R.C.M. 1947, 40-3310.

33-17-205. Licensing of resident agents' association — fee — powers — revocation. (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability any association of licensed Montana insurance agents, whether or not incorporated, formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission thereon.

(3) Application for the license shall be made in the name of the association by its duly constituted president and secretary, and the license may be issued to the association in its name alone.

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only and without notice to the individual officers or members of the association, revoke the license if he finds that continuation thereof is not in the public interest or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

History: En. Sec. 155, Ch. 286, L. 1959; amd. Sec. 10, Ch. 44, L. 1969; R.C.M. 1947, 40-3311.

33-17-206. Appointment and licensing of solicitors — limitations. (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed, except that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or countersign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

History: En. Sec. 165, Ch. 286, L. 1959; amd. Sec. 12, Ch. 44, L. 1969; R.C.M. 1947, 40-3321.

33-17-207 through 33-17-210 reserved.

33-17-211. Application for license. (1) Application for an agent or solicitor license shall be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner shall designate and prepare forms for application for license which shall require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application shall state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application shall be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application shall show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application shall also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims applicant to be indebted to it and, if so, the details thereof and the defenses, if any, of the applicant thereto; whether applicant ever had an agency contract canceled and the facts thereof; and if applicant is married, like information with respect to the applicant's spouse.

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in

the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring the applicant's own risks or interests and those of the applicant's relatives or employer.

(9) All such applications shall be accompanied by the applicable license fee, appointment of agent fee where applicable, examination fee where required under 33-17-212, all in the respective amounts stated in 33-2-708.

History: En. Sec. 156, Ch. 286, L. 1959; amd. Sec. 19, Ch. 535, L. 1975; R.C.M. 1947, 40-3312.

33-17-212. Examination required. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to a personal written examination as to his competence to act as such agent or solicitor.

(2) If the applicant is a firm or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license.

(3) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; for the purposes of this provision, "marine" insurance shall be deemed to be included in "property" insurance;

(d) casualty insurance;

(e) vehicle insurance;

(f) surety insurance.

(4) Examination of an applicant for a solicitor's license shall cover all the kinds of insurance, other than life, as to which the appointing agent is licensed.

(5) This section shall not apply to, and no such examination shall be required of:

(a) any individual lawfully licensed as an agent or solicitor as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be so licensed;

(b) any applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months next preceding date of application unless such previous license was suspended, revoked, or continuation thereof refused by the commissioner;

(c) any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code;

(d) all applicants for license as agent for an insurer that confines its business in this state substantially to the insuring of the property, interests, and risks of farmers, if exempted from examination by the commissioner, in his discretion, upon written request of the insurer;

(e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on such common carrier, as incidental to their duties as such transportation ticket agents;

(f) agents' associations applying for license under 33-17-205;

(g) title insurance agents.

History: En. Sec. 157, Ch. 286, L. 1959; amd. Sec. 11, Ch. 44, L. 1969; R.C.M. 1947, 40-3313.

33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion but at least once a month.

(2) All the kinds of insurance or class thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.

(3) The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

History: En. Sec. 158, Ch. 286, L. 1959; amd. Sec. 1, Ch. 156, L. 1969; R.C.M. 1947, 40-3314.

33-17-214. Issuance of license — contents. (1) The commissioner shall promptly issue licenses applied for to persons qualified therefor in accordance with this chapter.

(2) The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, kind or kinds of insurance covered, and the other conditions of the license.

(3) If the license is as agent for life and/or disability insurance only, the license shall state the name of the insurer to be so represented. If the license is as agent for any other kind or kinds of insurance, it shall not state the name of any insurer to be so represented.

(4) If the licensee agent is a firm or corporation, the license shall also state the name of each individual authorized thereunder to exercise the license powers.

(5) If the licensee is a solicitor, the license shall state the name and address of the agent to be represented.

History: En. Sec. 159, Ch. 286, L. 1959; R.C.M. 1947, 40-3315.

33-17-215. Number of licenses permitted agent. (1) An agent licensed as to kinds of insurance other than life and/or disability insurance only is required to have but one license covering the kinds of insurance to be transacted by him regardless of the number of insurers by whom he is appointed as agent. The same license may include both life insurance and disability insurance.

(2) As to agents licensed as to life and/or disability insurance only, the agent shall have one license for each such insurer to be represented as agent.

(3) A life insurance agent may concurrently be licensed as to an additional life insurer or insurers upon due application, appointment, and qualification. Upon request therefor filed with the commissioner by the insurer, the commissioner shall notify a life insurer thereof whenever any of its agents licensed as such in this state has been likewise licensed as to another life insurer.

History: En. Sec. 160, Ch. 286, L. 1959; R.C.M. 1947, 40-3316.

33-17-216. Temporary agent licenses — fee. (1) The commissioner may issue a temporary license as agent to or with respect to an individual qualified therefor only as to age, residence, and trustworthiness and without requiring such individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of such administrator or executor, of a licensed agent becoming deceased;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed agent disabled by sickness, injury, or insanity;

(c) to an employee of a firm, or officer or employee of a corporation, licensed as agent, upon the death or disability of an individual designated in the license to exercise the powers thereof;

(d) to the designee of a licensed agent entering upon active service in the armed forces of the United States of America;

(e) upon request of the insurer, to an applicant for license as a life insurance agent, pending the taking of any examination required of the applicant by the commissioner under 33-17-212, if the applicant is duly enrolled in and is actively pursuing an adequate course of instruction, as provided by or through the insurer, in preparation for such examination. Such license shall be for a period of not over 90 days or until the applicant has had a reasonable opportunity to take such examination and be informed by the commissioner as to the results thereof, whichever is the shorter period, but subject to extension by the commissioner as provided in subsection (3) below.

(2) The temporary license shall be issued upon application filed with the commissioner in such form and containing such information as the commissioner may reasonably require and upon payment of the applicable fee as stated in 33-2-708.

(3) The temporary license shall be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that such a license issued pursuant to subsection (1)(a) above may be continued without payment of additional fee until the executor or administrator disposes of the insurance business but not to exceed a period of 15 months. Temporary license issued to the next of kin under such subsection (1)(a) shall not be extended for an additional term or terms after appointment and qualification of such an administrator or executor.

(4) The fee paid for the temporary license may be applied upon the fee required for any permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.

History: En. Sec. 163, Ch. 286, L. 1959; R.C.M. 1947, 40-3319.

33-17-217. Limitations and rights under temporary license. (1) The commissioner shall not issue more than one temporary license, to or with respect to the same individual to be so licensed, within any 12-month period.

(2) The temporary license may cover the same kinds of insurance for which the agent thereby being replaced was licensed.

(3) As to a temporary agent's license issued on account of the death or disability of an agent, the licensee may so represent all of the insurers last represented by such deceased or disabled agent and without the making of new appointment of such licensee by such insurers, but the licensee shall not be appointed as to any additional insurer or additional kind of insurance under such a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

(4) A temporary licensee shall have the same license powers and duties as under a permanent license.

History: En. Sec. 164, Ch. 286, L. 1959; R.C.M. 1947, 40-3320.

33-17-218. Continuance and expiration of licenses. (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked, or terminated but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in 33-2-708, accompanied by written request for such continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in 33-2-708. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 33-17-231(5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) Any license referred to in subsection (1) as to which such fee and request for continuation are not received by the commissioner as required in such subsection (1) shall be deemed to have expired as of midnight on May 31 next following. Request for continuation of any such license and/or payment of the continuation fee therefor which is received by the commissioner after such May 1 and prior to the next following June 15 may be accepted and effectuated by the commissioner, in his discretion, if accompanied by an annual continuation fee in twice the amount otherwise required.

(3) The license of an agent as to property, casualty, or surety insurance shall continue in force as long as there is in effect as to such agent as shown by the commissioner's records an appointment or appointments, as agent of authorized insurers, covering collectively all of the kinds of insurance included in the agent's license. Upon termination of all of such an agent's agency appointments as to a particular kind of insurance and failure to secure and file with the commissioner a new appointment as to such kind of insurance within 90 days thereafter, the agent's license shall automatically thereupon expire and terminate as to such kind of insurance and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to the kinds of insurance covered by the agent's remaining appointments.

(4) This section shall not apply to temporary licenses issued under 33-17-216.

History: En. Sec. 172, Ch. 286, L. 1959; amd. Sec. 13, Ch. 44, L. 1969; R.C.M. 1947, 40-3328.

33-17-219 and 33-17-220 reserved.

33-17-221. Licensing insurance vending machines as solicitors. (1) A licensed resident agent may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machine supervised by him and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(b) the type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in defective machines and for which no insurance or a less amount than that paid for is actually received.

(2) As to each such machine to be so used, the commissioner shall issue to the agent a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be so sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the agent. The commissioner shall also revoke the license as to any machine as to which he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee shall be as stated in 33-2-708 for each license year or part thereof for each respective vending machine. Proof of the existence of a subsisting license shall be displayed on or about each such vending machine in use in such manner as the commissioner may reasonably require.

History: En. Sec. 166, Ch. 286, L. 1959; R.C.M. 1947, 40-3322.

33-17-222 through 33-17-230 reserved.

33-17-231. Appointment of agents — continuation and termination. (1) Each insurer appointing an agent in this state as to property, casualty, or surety insurance shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the fee therefor as stated in 33-2-708. If the appointment includes casualty insurance, the agent may be appointed by the same insurer also as to disability insurance without requiring an additional appointment or appointment fee.

(2) Subject to annual continuation by the insurer not later than May 31, each such appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

(3) Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the annual continuation of appointment fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose appointments in this state are not to remain in effect.

(4) Subject to the agent's contract rights, an insurer may terminate an agency appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner and to the agent where reasonably possible. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent.

(5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause thereof. Any information or statement contained in the notice of termination shall be privileged and shall not be admissible as evidence in any action or proceeding against the insurer or any representative thereof by or in behalf of any person affected by such termination.

History: En. Sec. 161, Ch. 286, L. 1959; R.C.M. 1947, 40-3317.

33-17-232. Rights of agent following termination of appointment. (1) Following termination of any such agency appointment as to property, casualty, or surety insurance and subject to the terms of any agreement between the agent and the insurer, the agent may continue to service and receive from the insurer commissions or other compensation relative to business written by him for the insurer during the existence of the appointment.

(2) This section does not apply as to agents of direct writing insurers or agents or insurers between whom the relationship of employer and employee exists.

History: En. Sec. 162, Ch. 286, L. 1959; R.C.M. 1947, 40-3318.

Part 3

Adjusters

33-17-301. Adjuster's license — qualifications — catastrophe adjustments. (1) No person shall in this state act as or hold himself out to be an adjuster unless then licensed therefor under this chapter. Application for license shall be made to the commissioner according to forms as prescribed and furnished by him. The commissioner shall issue the license as to individuals qualified therefor upon payment of the license fee stated in 33-2-708.

(2) To be licensed as an adjuster the applicant must be qualified therefor as follows:

(a) must be an individual 18 years of age or more;

(b) must be a resident in and of Montana or resident of another state which will permit residents of Montana regularly to act as adjusters in such other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or must have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster;

(d) must be of good character and reputation;

(e) must have and maintain in this state an office accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of such office in the home of the licensee.

(3) A firm or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is separately licensed or is named in the firm or corporation license and is qualified as for an individual license as adjuster. An additional full license fee shall be paid as to each individual in excess of one so named in the firm or corporation license to exercise its powers.

(4) No such adjuster's license or qualifications shall be required as to any adjuster who is sent into this state by and on behalf of an insurer or adjusting firm or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all such losses.

History: En. Sec. 171, Ch. 286, L. 1959; amd. Sec. 6, Ch. 423, L. 1971; R.C.M. 1947, 40-3327.

Part 4

Nonresident Licensees

33-17-401. Nonresident agent — reciprocity. The commissioner may license as an agent a person who is otherwise qualified under this code but who is not a resident of this state if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

History: En. Sec. 1, Ch. 44, L. 1969; R.C.M. 1947, 40-3333.

33-17-402. Nonresident agent's right to solicit business contingent upon reciprocal arrangement. A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

History: En. Sec. 2, Ch. 44, L. 1969; R.C.M. 1947, 40-3334.

33-17-403. Nonresident agent required to be licensed in state of residence — limited to insurers represented — certification. An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

History: En. Sec. 3, Ch. 44, L. 1969; R.C.M. 1947, 40-3335.

33-17-404. Countersigning coverage of residents. A nonresident agent shall not sign or countersign policies covering subjects of insurance located or to be performed in Montana. These policies must be countersigned by a licensed resident agent.

History: En. Sec. 4, Ch. 44, L. 1969; R.C.M. 1947, 40-3336.

33-17-405. Service of process — commissioner as agent. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney-in-fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of $5. The commissioner shall then promptly forward a copy of the service by registered or certified mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee.

History: En. Sec. 5, Ch. 44, L. 1969; R.C.M. 1947, 40-3337.

33-17-406. Nonresident agent subject to insurance code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969; R.C.M. 1947, 40-3338.

Part 5

Consultants

33-17-501. Short title. This part may be cited as "The Montana Insurance Consultant Licensure Act".

History: En. 40-3339 by Sec. 1, Ch. 144, L. 1975; R.C.M. 1947, 40-3339.

33-17-502. Prohibition on holding out as consultant — receiving fee. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services.

History: En. 40-3340, 40-3348 by Secs. 2, 10, Ch. 144, L. 1975; R.C.M. 1947, 40-3340, 40-3348.

33-17-503. Application — fee — expiration. (1) Before an insurance consultant's license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of $50.

(2) Every consultant's license shall expire on May 31 next following the date of issue.

History: En. 40-3341 by Sec. 3, Ch. 144, L. 1975; R.C.M. 1947, 40-3341.

33-17-504. Issuing license — limitations. The commissioner may issue an insurance consultant's license to any natural person who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, and 33-1-209 through 33-1-212, as specified in such license.

History: En. 40-3342 by Sec. 4, Ch. 144, L. 1975; R.C.M. 1947, 40-3342.

33-17-505. Qualification — fee. (1) In order to determine the competency of every applicant for license as an insurance consultant, the commissioner shall require membership in one or more of the following: the American college of life underwriters, the American college of property and liability underwriters, the society of actuaries, the casualty actuarial society, or the American academy of actuaries or require the applicant to pass an examination.

(2) The fee for taking such an examination shall be $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subse-

quent examination shall be no more than the cost of administering such examination, not to exceed $50.

History: En. 40-3343 by Sec. 5, Ch. 144, L. 1975; amd. Sec. 1, Ch. 146, L. 1977; R.C.M. 1947, 40-3343.

33-17-506. Grounds for refusal to issue license. The commissioner may refuse to issue an insurance consultant's license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant or has given cause for revocation or suspension of a license or has failed to comply with any prerequisite for the issuance of a license.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part).

33-17-507. Revocation. The commissioner may revoke or suspend any insurance consultant's license for a period he determines if, after notice and hearing as specified in this chapter, he determines that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of his dealings as a consultant;

(2) has made a material misstatement in application for a consultant's license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant.

History: En. 40-3344 by Sec. 6, Ch. 144, L. 1975; R.C.M. 1947, 40-3344(part).

33-17-508 through 33-17-510 reserved.

33-17-511. Consideration for services only on written memorandum. No person licensed as an insurance consultant under this part may receive any fee for examining, appraising, reviewing, or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. A copy of every memorandum or contract shall be retained by the licensee for not less than 3 years after those services have been fully performed.

History: En. 40-3345 by Sec. 7, Ch. 144, L. 1975; R.C.M. 1947, 40-3345.

33-17-512. Limitation on type of consideration. No person licensed as an insurance consultant may receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities or trusts in connection with pensions for any person to whom any licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months.

History: En. 40-3346 by Sec. 8, Ch. 144, L. 1975; R.C.M. 1947, 40-3346.

33-17-513. Restrictions on insurers recommended by licensee. No person licensed as an insurance consultant under this part may recommend or encourage the purchase of insurance, annuities, or securities from any authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest.

History: En. 40-3347 by Sec. 9, Ch. 144, L. 1975; R.C.M. 1947, 40-3347.

Parts 6 through 9 reserved

Part 10

Revocation, Suspension, and Penalties

33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus line agent license if, after hearing held on not less than 20 days' advance notice by registered or certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders or insurer or beneficiaries or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers.

History: En. Sec. 173, Ch. 286, L. 1959; R.C.M. 1947, 40-3329.

33-17-1002. Procedure following suspension or revocation. (1) Upon suspension or revocation of any such license the commissioner shall forthwith notify the licensee thereof either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to the insurers represented by the agent, in the case of an agent's license, and to the agent by whom appointed in the case of a solicitor's license.

(2) Suspension or revocation of the license of an agent shall automatically revoke or suspend the licenses of all solicitors appointed by him.

(3) The commissioner shall not again issue a license under this code to or as to any person whose license has been revoked until after expiration of 1 year and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this code. A person whose license has been revoked twice shall not again be eligible for any license under this code.

(4) If the license of a firm or corporation is so suspended or revoked, no member of such firm or officer or director of such corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of such suspension or revocation unless the commissioner determines upon substantial evidence that such member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

History: En. Sec. 174, Ch. 286, L. 1959; R.C.M. 1947, 40-3330.

33-17-1003. Return of license. (1) All licenses issued under this chapter, although issued and delivered to the licensee agent, solicitor, or adjuster, shall at all times be the property of the state of Montana. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the commissioner either by personal delivery or by mail.

(2) As to any license lost, stolen, or destroyed while in the possession of any such licensee or person, the commissioner may accept in lieu of return of the license the affidavit of the licensee or other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft, or destruction.

History: En. Sec. 175, Ch. 286, L. 1959; R.C.M. 1947, 40-3331.

33-17-1004. Acting as insurance agent, solicitor, or adjuster without license — penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall upon conviction be guilty of a misdemeanor and fined $500 or imprisoned in the county jail for 90 days or both such fine and imprisonment.

History: En. 40-3332 by Sec. 1, Ch. 256, L. 1967; R.C.M. 1947, 40-3332.

Part 11

Conduct of Business by Agents

33-17-1101. Place of business — display of license — records. (1) Every agent shall have and maintain in this state a place of business accessible to the public. Such place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof. Nothing in this section shall be deemed to prohibit maintenance of such place of business in the licensee's place of residence in this state.

(2) The licenses of the licensee and the licenses of solicitors appointed by and representing the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

(3) The agent shall keep at his place of business complete records pertaining to transactions under his license and the licenses of his solicitors, for a period of at least 3 years after completion of the respective transactions.

(4) This section shall not apply as to life and disability insurances.

History: En. Sec. 167, Ch. 286, L. 1959; R.C.M. 1947, 40-3323.

33-17-1102. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. If the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is, upon conviction, guilty of theft and shall be punished as provided by law.

History: En. Sec. 168, Ch. 286, L. 1959; amd. Sec. 51, Ch. 359, L. 1977; R.C.M. 1947, 40-3324.

33-17-1103. Exchange of business — sharing commissions. (1) An agent may, occasionally only, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through a licensed agent, resident in this state, of the insurer. Both agents involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage so placed.

(2) The agents involved in a lawful exchange of business under subsection (1) above may divide between them the commission or compensation payable on account of such coverage.

(3) No agent or solicitor shall directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such transactions, except as provided in 33-17-1113. This provision shall not affect payment of the regular salaries due employees of the licensee or the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a firm or corporation or use of funds for family or personal purposes.

(4) This section does not apply as to those transactions with surplus lines agents which are lawful under 33-2-306 or as to life or disability insurance placed as provided in 33-17-1104.

History: En. Sec. 169, Ch. 286, L. 1959; R.C.M. 1947, 40-3325.

33-17-1104. Life or disability agent authorized to place excess or rejected business. A life or disability insurance agent may from time to time place excess or rejected risks in any other life or disability insurer authorized to transact insurance in this state, with the knowledge and approval of the insurer or insurers as to which the agent is so licensed, and may receive a commission thereon without being required to have a license as to such other insurer.

History: En. Sec. 170, Ch. 286, L. 1959; R.C.M. 1947, 40-3326.

33-17-1105 through 33-17-1110 reserved.

33-17-1111. Resident agent required — countersignature — records — exceptions. (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless the policy is written through a licensed agent, resident in Montana, of the insurer or unless the policy or countersignature endorsement attached thereto is countersigned by such agent.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization so long as the initials of such employee are written below the agent's name on such countersignature, but the agent shall not thereby delegate or have power to delegate to any other person the power or authority to bind an insurer with respect to any risk not already bound by the agent or other person having clear authority from the insurer so to bind. The agent shall be responsible for all of the acts of such employee within the scope

of the authority so delegated. The agent shall keep a record of each and all coverages countersigned by him or by his authority.

(3) This section shall not apply to:

(a) reinsurance;

(b) life insurance, disability insurance, or annuity contracts;

(c) insurance of the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance, or operation thereof;

(d) insurance of property in course of transportation interstate or in foreign trade or any liability or risk incident thereto;

(e) insurance of wet marine and transportation risks;

(f) countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business;

(g) bid bonds, as required under Title 18, chapter 1, part 2.

(4) Violation of this section shall not invalidate any contract otherwise valid as between the insurer and the insured.

History: En. Sec. 67, Ch. 286, L. 1959; amd. Sec. 1, Ch. 72, L. 1963; R.C.M. 1947, 40-2822.

33-17-1112. Salaried personnel not to countersign — exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed agent of the insurer resident in Montana, whose compensation as such agent is by commission computed as a percentage of the premium received on each such policy written, shall have power to countersign as required by 33-17-1111.

(2) No branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation therefrom is in whole or in part by salary, shall have power to countersign such policies or countersignature endorsements thereto; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident agent of the insurer having power to execute the policy is then reasonably available, then any other individual having authority therefor from the insurer may execute such policy in the first instance in order to make a contract between the insurer and the obligee or the insured if such policy is subsequently countersigned in fact by such a resident agent.

History: En. Sec. 68, Ch. 286, L. 1959; R.C.M. 1947, 40-2823.

33-17-1113. Policies originating outside state — commission of resident agent. (1) As to policies or endorsements thereto which are subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, there shall be payable to the countersigning agent, resident in Montana, a commission which shall not be less than 5% of the premium charged and received but not to exceed 50% of the commission paid by the insurer, so that a record within Montana will be kept of such business and that the state may better receive any tax required by law to be paid with respect to such insurance. If, however, the originating agent or broker or the insurer desires additional service to be rendered during the term of the policy, then the compensation for such countersigning resident agent shall be in such additional amount as is fixed by mutual agreement of such parties in interest.

(2) If pursuant to the laws of another state the countersigning agents of that state retain as commission or compensation with respect to business originated by Montana agents more than 5% of the premium, then Montana agents who countersign policies representing business originated by agents or brokers of such other

state shall charge and receive a commission in amount not less than that so received by countersigning agents of the other state.

History: En. Sec. 69, Ch. 286, L. 1959; R.C.M. 1947, 40-2824.

33-17-1114. Policies issued at home or branch offices. Nothing in 33-17-1111 through 33-17-1113 shall prevent any insurer from issuing any policy, as to which the resident agent or countersignature requirement of 33-17-1111 is applicable, at its home or branch office, but such policies shall be subsequently countersigned, where otherwise required, by its agent resident in Montana. The insurer's licensed agent resident in Montana shall receive the commission on such policy when the premium is paid. This section does not apply as to life insurance.

History: En. Sec. 70, Ch. 286, L. 1959; R.C.M. 1947, 40-2825.

CHAPTER 18

UNFAIR TRADE PRACTICES

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Section

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Part 1

General Provisions

33-18-101. Purposes. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in P.L. 79-15, which was approved March 9, 1945, by defining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: En. Sec. 203, Ch. 286, L. 1959; amd. Sec. 6, Ch. 320, L. 1977; R.C.M. 1947, 40-3501.

33-18-102. Unfair methods or deceptive practices prohibited. No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

History: En. Sec. 204, Ch. 286, L. 1959; R.C.M. 1947, 40-3502.

Part 2

Insurer's Relations With Insured

33-18-201. Unfair claim settlement practices prohibited. No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

History: En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.

33-18-202. Misrepresentation of policies prohibited. No person shall:

(1) make, issue, circulate, or cause to be made, issued, or circulated any estimate, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(2) make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(3) make any misleading representation or any misrepresentation as to the financial condition of any insurer or as to the legal reserve system upon which any life insurer operates; or

(4) use any name or title of any policy or class of policies misrepresenting the true nature thereof.

History: En. Sec. 205, Ch. 286, L. 1959; R.C.M. 1947, 40-3503.

33-18-203. False or deceptive advertising prohibited. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

History: En. Sec. 206, Ch. 286, L. 1959; R.C.M. 1947, 40-3504.

33-18-204. Twisting prohibited. No person shall make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, surrender, retain, exchange, or convert any insurance policy.

History: En. Sec. 207, Ch. 286, L. 1959; R.C.M. 1947, 40-3505.

33-18-205. Filing or publishing false financial statements or making false entries prohibited. (1) No person shall file with any supervisory or other public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer. Any person who aids or abets in any such violation of this section shall be punishable upon conviction by a fine of $1,000 or by imprisonment in the county jail for 6 months or both such fine and imprisonment.

History: En. Sec. 208, Ch. 286, L. 1959; amd. Sec. 1, Ch. 29, L. 1967; R.C.M. 1947, 40-3506.

33-18-206. Unfair discrimination prohibited — life insurance, annuities, and disability insurance. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of such contract or in any other manner whatever.

History: En. Sec. 211, Ch. 286, L. 1959; R.C.M. 1947, 40-3509.

33-18-207. Preferred rates to fictitious groups prohibited — approval of preferred group rates and forms. (1) No insurer, whether an authorized insurer or an unathorized insurer, shall make available through any rating plan or form, property, casualty, or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form other than as offered to persons not in such group or combination and to the public generally unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory and as not otherwise being in conflict with subsection (1) above or with any provision of parts 1 through 4 of chapter 16 to the extent that parts 1 through 4 are, by their terms, applicable thereto.

(3) This section does not apply to life insurance, disability insurance, workers' compensation insurance written for industry or business associations, or annuity contracts. However, workers' compensation group insurance rates are subject to all applicable provisions of chapter 16, part 10.

History: En. Sec. 222, Ch. 286, L. 1959; amd. Sec. 1, Ch. 292, L. 1977; R.C.M. 1947, 40-3520.

33-18-208. Contract to contain agreements — rebates prohibited — life, disability, and annuity contracts. Except as otherwise expressly provided by law, no person shall knowingly:

(1) permit or offer to make or make any contract of life insurance, life annuity, or disability insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon;

(2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the contract;

(3) directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any insurance company or other corporation, association, or partnership or any dividends or profits accrued or to accrue thereon; or

(4) offer, promise, or give anything of value whatsoever not specified in the contract.

History: En. Sec. 212, Ch. 286, L. 1959; R.C.M. 1947, 40-3510.

33-18-209. Exceptions to discrimination and rebates provision. Nothing in 33-18-206 and 33-18-208 shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer;

(2) in the case of life insurance policies issued on the industrial debit, preauthorized check, bank draft, or similar plans, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by preauthorized check, bank draft, or similar plans, in an amount which fairly represents the saving in collection expense;

(3) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) reduction of premium rate for policies of large amount but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts;

(5) issuing life or disability insurance policies on a salary savings or payroll deduction plan at reduced rate reasonably commensurate with the savings made by the use of such plan.

History: En. Sec. 213, Ch. 286, L. 1959; R.C.M. 1947, 40-3511.

33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) No title, property, casualty, or surety insurer or any employee, representative, agent, or solicitor thereof may, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, any rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy; any special favor or advantage in the dividends or other benefits to accrue thereon; or any valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy or any employee of the insured may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium; special favor or advantage; or valuable consideration or inducement.

(3) No such insurer may make or permit any unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) Nothing in this section may be construed as prohibiting the payment of commissions or other compensation to duly licensed agents or solicitors or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

History: En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969; amd. Sec. 5, Ch. 38, L. 1977; amd. Sec. 8, Ch. 320, L. 1977; R.C.M. 1947, 40-3512.

33-18-211. Stock operations and advisory board contracts. No person shall issue or deliver or permit its agents, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or any advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance.

History: En. Sec. 215, Ch. 286, L. 1959; R.C.M. 1947, 40-3513.

33-18-212. Illegal dealing in premiums — improper charges for insurance. (1) No person shall willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus line agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section shall be punishable under 33-1-104.

History: En. Sec. 221, Ch. 286, L. 1959; R.C.M. 1947, 40-3519.

Part 3

Insurers — Noninsurance-Related Prohibitions

33-18-301. Prohibited relations with mortuaries. (1) No life insurer shall own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment or permit its officers, employees, or representatives to own, operate, maintain, or be employed in any such business.

(2) No life insurer shall contract or agree with any funeral director, mortuary, or undertaker to the effect that such funeral director, undertaker, or mortuary shall conduct the funeral of any person insured by such insurer.

(3) Each violation of this section shall constitute a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment at hard labor for not more than 6 months or both such fine and imprisonment in the discretion of the court.

History: En. Sec. 223, Ch. 286, L. 1959; R.C.M. 1947, 40-3521.

33-18-302. Defaming insurer prohibited. No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

History: En. Sec. 209, Ch. 286, L. 1959; R.C.M. 1947, 40-3507.

33-18-303. Boycott, coercion, or intimidation prohibited. No person shall enter into any agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.

History: En. Sec. 210, Ch. 286, L. 1959; R.C.M. 1947, 40-3508.

33-18-304. Interlocking ownership and management — restrictions. (1) Any insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers or have a common management with any other insurer or insurers unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this code or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be director of two or more insurers which are competitors unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

History: En. Sec. 219, Ch. 286, L. 1959; R.C.M. 1947, 40-3517.

33-18-305. Political contributions prohibited — penalty. (1) No insurer shall directly or indirectly pay or use or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization or for or in aid of any corporation or other body organized or maintained for political purposes or for or in aid of any candidate for political office or for nomination for such office or for any political purpose whatsoever or for the reimbursement or indemnification of any person for money or property so used.

(2) Any officer, director, stockholder, attorney, or agent of any insurer which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year and a fine of not more than $1,000; and any officer or director aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

History: En. Sec. 220, Ch. 286, L. 1959; R.C.M. 1947, 40-3518.

Part 4

Insured's Relations With Insurer

33-18-401. False applications, claims, and proofs of loss — penalty. Any solicitor, agent, examining physician, applicant, or other person who knowingly or willfully makes any false or fraudulent statement or representation in or with reference to any application for insurance or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

History: En. Sec. 224, Ch. 286, L. 1959; R.C.M. 1947, 40-3522.

Part 5

Miscellaneous Prohibitions

33-18-501. Lenders — restrictions on solicitation, rejection, charges, and disclosure — favoring agent prohibited. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or agent or solicitor or group of agents or solicitors.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, solicitor, or agent pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser, information taken at a time other than the making of the loan or extension of credit relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) require any procedures or conditions of licensed agents, solicitors, or insurers not customarily required of those agents, solicitors, or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

History: En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977; R.C.M. 1947, 40-3516.1.

Parts 6 through 9 reserved

Part 10

Enforcement

33-18-1001. Complaint handling — record. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 33-1-401. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

History: En. 40-3502.2 by Sec. 2, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.2.

33-18-1002. Power of commissioner to examine insurers. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

History: En. 40-3502.3 by Sec. 3, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.3.

33-18-1003. Undefined unfair practices — procedures for determining and restraining. (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this chapter but that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

(2) If such report charges a violation of this chapter and if such method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of such report cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just, but the people of this state shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof, including all evidence taken and the report and findings, shall be received in evidence in such action.

(3) If the commissioner's report made under subsection (1) above or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the commissioner generally.

History: En. Sec. 217, Ch. 286, L. 1959; R.C.M. 1947, 40-3515.

33-18-1004. Desist orders for prohibited practices. (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders if no such appeal is taken or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in 33-18-1003(3).

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

History: En. Sec. 216, Ch. 286, L. 1959; amd. Sec. 7, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.

33-18-1005. Penalty for violation of cease and desist orders. (1) Any person who violates a cease and desist order issued pursuant to 33-18-1004 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a $10,000 aggregate. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 40-3514.1 by Sec. 4, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.1.

CHAPTER 19

RESERVED

CHAPTER 20

LIFE INSURANCE

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Part 1

Policy Provisions

33-20-101. Scope. Parts 1 through 4 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

History: En. Sec. 295, Ch. 286, L. 1959; R.C.M. 1947, 40-3801.

33-20-102. Industrial life insurance defined. For the purposes of this code, industrial life insurance is that form of life insurance written under policies of face amount of $2,000 or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969; R.C.M. 1947, 40-3802.

33-20-103. Standard provisions required — exceptions. (1) No policy of life insurance other than group and pure endowments with or without return of premiums or of premiums and interest shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-116.

(2) This section shall not apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(3) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

History: En. Sec. 297, Ch. 286, L. 1959; R.C.M. 1947, 40-3803.

33-20-104. Grace period. There shall be a provision that a grace period of 30 days or, at the option of the insurer, of 1 month of not less than 30 days or of 4 weeks in the case of industrial life insurance policies, the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force; but if a claim arises under the policy during such period of grace, the amount of any premium due or overdue may be deducted from the policy proceeds.

History: En. Sec. 298, Ch. 286, L. 1959; R.C.M. 1947, 40-3804.

33-20-105. Incontestability. There shall be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue.

History: En. Sec. 299, Ch. 286, L. 1959; R.C.M. 1947, 40-3805.

33-20-106. Entire contract. There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties and, if the application is so made a part of the policy, that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

History: En. Sec. 300, Ch. 286, L. 1959; R.C.M. 1947, 40-3806.

33-20-107. Misstatement of age. There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

History: En. Sec. 301, Ch. 286, L. 1959; R.C.M. 1947, 40-3807.

33-20-108. Dividends. (1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy, provided the policy is in force and all premiums to that date are paid.

(2) Except as hereinafter provided, any dividend becoming payable shall at the option of the party entitled to elect such option be either:

(a) payable in cash; or

(b) applied to any one of such other dividend options as may be provided by the policy.

(3) If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than 30 days following the date on which such dividend is due and payable.

(4) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subsection (2)(a) above even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed 6 years from the date of apportionment and that interest will be added to such dividend at a specified rate.

(5) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

(6) In participating industrial life insurance policies, in lieu of the provision required in subsections (1) through (5) above, there shall be a provision that, beginning not later than the end of the fifth policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

History: En. Sec. 302, Ch. 286, L. 1959; R.C.M. 1947, 40-3808.

33-20-109. Policy loan. (1) There shall be a provision that after three full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding 6% per annum, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(2) This section shall not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies.

History: En. Sec. 303, Ch. 286, L. 1959; R.C.M. 1947, 40-3809.

33-20-110. Table of values. There shall be a table showing in figures the loan value, if required under 33-20-109, and the cash surrender values and nonforfeiture benefits in accordance with 33-20-202(1)(e), either during the first 20 policy years or during the term of the policy, whichever is shorter.

History: En. Sec. 304, Ch. 286, L. 1959; R.C.M. 1947, 40-3810.

33-20-111. Table of installments. In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

History: En. Sec. 305, Ch. 286, L. 1959; R.C.M. 1947, 40-3811.

33-20-112. Reinstatement. There shall be a provision that the policy will be reinstated at any time within 3 years, or 2 years in the case of industrial life insurance policies, from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding 6% per annum compounded annually, unless:

(1) the policy has been surrendered for its cash surrender value;
(2) its cash surrender value has been exhausted; or
(3) the paid-up term insurance, if any, has expired.

History: En. Sec. 306, Ch. 286, L. 1959; R.C.M. 1947, 40-3812.

33-20-113. Payment of premiums. There shall be a provision relative to the payment of premiums.

History: En. Sec. 307, Ch. 286, L. 1959; R.C.M. 1947, 40-3813.

33-20-114. Payment of claims. There shall be a provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant. If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, such period shall not exceed 2 months from the receipt of such proofs.

History: En. Sec. 308, Ch. 286, L. 1959; R.C.M. 1947, 40-3814.

33-20-115. Beneficiary — industrial policies. (1) An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

(3) The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor or dies before the insured or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the executor or administrator of the insured or to any relative of the insured by blood or legal adoption or connection by marriage or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary or by reason of having incurred expense for the maintenance, medical attention, or burial of the insured.

(4) The policy may also include a similar provision applicable to any other payment due under the policy.

History: En. Sec. 309, Ch. 286, L. 1959; R.C.M. 1947, 40-3815.

33-20-116. Title. There shall be a title on the policy, briefly describing the same.

History: En. Sec. 310, Ch. 286, L. 1959; R.C.M. 1947, 40-3816.

33-20-117. Nonforfeiture rights — policies issued before operative date. (1) This section shall apply only to policies of life insurance issued prior to the operative date of 33-20-213.

(2) In event of default in payment of any premium due on any policy, provided not less than three full years' premiums shall have been paid, there shall be secured to the insured, without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the insurer of such policy, less 2 ½% of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the insurer at its home office within 1 month after date of default for cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid.

History: En. Sec. 326, Ch. 286, L. 1959; R.C.M. 1947, 40-3832.

33-20-118. Contestability — excluded or restricted coverage. A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

History: En. Sec. 311, Ch. 286, L. 1959; R.C.M. 1947, 40-3817.

33-20-119. Incontestability — limitation on liability after reinstatement of life insurance or annuity. (1) A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

(2) When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability might have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

History: En. Sec. 322, Ch. 286, L. 1959; R.C.M. 1947, 40-3828.

33-20-120. Policy settlements — holding proceeds — indebtedness deducted from proceeds. (1) Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

(2) In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of:

(a) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy; and

(b) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

History: En. Secs. 323, 324, Ch. 286, L. 1959; R.C.M. 1947, 40-3829, 40-3830.

33-20-121. Prohibited provisions — limitations on liability. (1) No policy of life insurance shall be delivered or issued for delivery in this state if it contains any of the following provisions:

(a) a provision for a period shorter than that provided by statute within which an action at law or in equity may be commenced on such a policy;

(b) a provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

(i) death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of such war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(ii) death as a result of aviation or any air travel or flight;

(iii) death as a result of a specified hazardous occupation or occupations;

(iv) death while the insured is a resident outside continental United States and Canada; or

(v) death within 2 years from the date of issue of the policy as a result of suicide, while sane or insane.

(2) A policy which contains any exclusion or restriction pursuant to subsection (1) of this section shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

(3) This section shall not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities, or to any provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) Nothing contained in this section shall prohibit any provision which in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

History: En. Sec. 320, Ch. 286, L. 1959; R.C.M. 1947, 40-3826.

33-20-122. Prohibited provisions — industrial life insurance. No policy of industrial life insurance shall contain any of the following provisions:

(1) a provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer;

(2) a provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical, or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within 2 years prior to the issuance of the policy, received institutional, hospital, medical, or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk;

(3) a provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

History: En. Sec. 321, Ch. 286, L. 1959; R.C.M. 1947, 40-3827.

33-20-123. Prohibited policy plans — life insurance policies or annuity contracts. (1) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group or under any other similar plan.

(2) No insurer shall issue for delivery or deliver in this state any life insurance policy or annuity contract providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. This provision shall not be deemed to prohibit the payment or allowance of regular annual dividends or "savings" under participating forms of policies or contracts or prohibit the annual distribution to policyholders or beneficiaries of sums representing in part gains to the insurer from lapses, surrenders, or mortality either in general or as resulting from particular classifications of policies.

History: En. Sec. 327, Ch. 286, L. 1959; R.C.M. 1947, 40-3833.

Part 2

Standard Nonforfeiture Law
Life Insurance

33-20-201. Short title. This part shall be known as "The Standard Nonforfeiture Law."

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(1).

33-20-202. Nonforfeiture provisions. (1) In the case of policies issued on or after the operative date of this part as defined in 33-20-213, no policy of life insurance, except as set forth in 33-20-212, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

(a) that in the event of default in any premium payment after premiums have been paid for at least 1 full year, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date of such value as may be specified in this part;

(b) that upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance and 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this part;

(c) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default;

(d) that if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be specified in this part;

(e) a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy;

(f) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state;

(g) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy;

(h) if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and

(i) a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(2) Any of the provisions or portions thereof set forth in subsections (a) through (i) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(2), (3).

33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life. (1) Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by 33-20-202, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) the then present value of the adjusted premiums as defined in 33-20-204 through 33-20-207, corresponding to premiums which would have fallen due on and after such anniversary; and

(b) the amount of any indebtedness to the insurer on account of or secured by the policy.

(2) Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits, whether or not required by 33-20-202, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(3) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this part in the absence of the conditions that premiums shall have been paid for at least a specified period.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(4), (5).

33-20-204. Adjusted premium. (1) (a) Except as provided in subsection (2), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 2% of the amount of the insurance if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(iii) 40% of the adjusted premium for the first policy year;

(iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(b) In applying the percentages specified in subsections (iii) and (iv) above, no adjusted premiums shall be deemed to exceed 4% of the amount of insurance or uniform amount equivalent thereto.

(c) Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(d) (i) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsections (a) and (b) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(ii) In the case of a policy for a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(2) (a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance.

(b) The foregoing items (a)(i) and (a)(ii) being calculated separately and as specified in subsection (1) except that, for the purposes of (ii), (iii), and (iv) of subsection (1), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (a)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a)(i) of this subsection.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(6), (7), (7-a).

33-20-205. Calculation — mortality table — rates of interest. Except as otherwise provided in 33-20-206 and 33-20-207:

(1) All adjusted premiums and present values referred to in this part shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table.

(2) For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table.

(3) All calculations shall be made on the basis of the rate of interest, not exceeding 3 ½% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table.

(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8).

33-20-206. Mortality tables — policies issued after operative date. (1) In the case of ordinary policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of the commissioners 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that:

(a) such rate of interest shall not exceed 3 ½% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to January 1, 1986;

(b) for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 3 years younger than the actual age of the insured;

(c) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1958 extended term insurance table;

(d) for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) After July 1, 1961, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the ordinary policies thereafter

issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-a).

33-20-207. Industrial policies — mortality tables. (1) In the case of industrial policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that:

(a) such rate of interest shall not exceed 3 ½% per annum except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to January 1, 1986;

(b) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table;

(c) for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) After February 22, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1968.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(8-b).

33-20-208 through 33-20-210 reserved.

33-20-211. Calculation of values — other requisites. (1) Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(2) All values referred to in 33-20-203 through 33-20-207 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.

(3) The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions.

(4) Notwithstanding the provisions of subsections (1) and (2) of 33-20-203, additional benefits payable under the following circumstances shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this part, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits:

(a) in the event of death or dismemberment by accident or accidental means;

(b) in the event of total and permanent disability;

(c) as reversionary annuity or deferred reversionary annuity benefits;

(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this part would not apply;

(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid up by reason of the death of a parent of the child; and

(f) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(9).

33-20-212. Exceptions. This part shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, or to any term policy of uniform amount, or renewal thereof, of 15 years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy or to any term policy of decreasing amount on which each adjusted premium, calculated as specified in 33-20-204 through 33-20-207, is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows:

(1) For ages at issue 50 and under, the term shall be 15 years.

(2) Thereafter, the term shall decrease 1 year for each year of age beyond 50.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(10).

33-20-213. Operative date. After July 1, 1945, any insurer could have filed with the state auditor a written notice of its election to comply with the provisions of this part after a specified date before January 1, 1948, with respect to the policies specified in the notice. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer with respect to such policies), this part shall have become operative with respect to the policies specified in such notice thereafter issued by such insurer. As to all of its policies and contracts with respect to which an insurer makes no such election, the operative date of this part with respect to such policies and contracts for such insurer is January 1, 1948.

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965; amd. Sec. 2, Ch. 341, L. 1973; R.C.M. 1947, 40-3831(11).

Part 3

Annuity Contract Provisions

33-20-301. Standard provisions — annuity and pure endowment contracts. (1) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities and except as stated herein, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in 33-20-302 through 33-20-307. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

(2) This section shall not apply to contracts for deferred annuities included in or upon the lives of beneficiaries under life insurance policies.

History: En. Sec. 312, Ch. 286, L. 1959; R.C.M. 1947, 40-3818.

33-20-302. Grace period. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that there shall be a period of grace of 1 month, but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding 6% per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

History: En. Sec. 313, Ch. 286, L. 1959; R.C.M. 1947, 40-3819.

33-20-303. Incontestability. If any statements other than those relating to age, sex, and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to 33-20-305, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

History: En. Sec. 314, Ch. 286, L. 1959; R.C.M. 1947, 40-3820.

33-20-304. Entire contract. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

History: En. Sec. 315, Ch. 286, L. 1959; R.C.M. 1947, 40-3821.

33-20-305. Misstatement of age or sex. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding 6% per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

History: En. Sec. 316, Ch. 286, L. 1959; R.C.M. 1947, 40-3822.

33-20-306. Dividends. If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

History: En. Sec. 317, Ch. 286, L. 1959; R.C.M. 1947, 40-3823.

33-20-307. Reinstatement. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within 1 year from the default in making stipulated payments to the insurer, unless the cash surrender value had been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding 6% per annum payable annually. In cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

History: En. Sec. 318, Ch. 286, L. 1959; R.C.M. 1947, 40-3824.

Part 4

Reversionary Annuity Contract Provisions

33-20-401. Standard provisions. (1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(a) Any such reversionary annuity contract shall contain the provisions specified in 33-20-302 through 33-20-306, except that under 33-20-302 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within 3 years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding 6% per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

History: En. Sec. 319, Ch. 286, L. 1959; R.C.M. 1947, 40-3825.

Parts 5 through 9 reserved

Part 10

General Requirements for Group Life

33-20-1001. Group contracts required to meet group requirements. (1) No life insurance policy shall be delivered in this state insuring the lives of more than one individual unless to one of the groups as provided for in 33-20-1101 through 33-20-1105 and unless in compliance with the other applicable provisions of parts 10 through 12 of this chapter.

(2) Subsection (1) above shall not apply to life insurance policies insuring only individuals:

(a) related by blood, marriage, or legal adoption;

(b) having a common interest through ownership of a business enterprise or a substantial legal interest or equity therein and who are actively engaged in the management thereof; or

(c) otherwise having an insurable interest in each other's lives.

History: En. Sec. 328, Ch. 286, L. 1959; R.C.M. 1947, 40-3901.

33-20-1002. Employee life insurance defined. "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than five employees at date of issue. Premiums for such policies shall be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees.

History: En. Sec. 349, Ch. 286, L. 1959; R.C.M. 1947, 40-3922.

33-20-1003. Violations. Violations of parts 10 through 12 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 350, Ch. 286, L. 1959; R.C.M. 1947, 40-3923.

Part 11

Groups and Group Requirements

33-20-1101. Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of such affiliated corporations, proprietors, or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 10 employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

History: En. Sec. 329, Ch. 286, L. 1959; R.C.M. 1947, 40-3902.

33-20-1102. Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

History: En. Sec. 330, Ch. 286, L. 1959; R.C.M. 1947, 40-3903.

33-20-1103. Employer and labor union combinations — trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom

evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued if:

(a) either:

(i) the participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance; or

(ii) the total number of persons covered at date of issue exceeds 600; and

(b) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

History: En. Sec. 331, Ch. 286, L. 1959; R.C.M. 1947, 40-3904.

33-20-1104. Public employee groups. The lives of a group of individuals may be insured under a policy issued to an incorporated city, town, or village or an association or league of cities, towns, or villages, an independent school district, state college or university, any association of state employees, and any association of state, county, and city, town, or village employees and any combination of state, county, or city, town, or village employees and any department of the state or county government, which employer or association shall be deemed the policyholder, to insure the employees of any such incorporated city, town, or village, of any such independent school district, of any such state college and university, or of any such department of the state or county government or members of any association of state, county, or city, town, or village employees, for the benefit of persons other than the policyholder, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include retired employees. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder wholly from funds contributed by it as employer or partly from such funds and partly from funds contributed by the insured employees or wholly from funds contributed by the insured employees, except that:

(a) the employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do; and

(b) the premium for the policy may be paid by the policyholder wholly or partly from funds contributed by any incorporated city, town, or village policyholder when authorized by the charter of such city, town, or village or as otherwise authorized by law.

(3) Such policy may be placed in force only if at least 75% of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

(4) The policy must cover at least 10 employees at date of issue.

History: En. Sec. 332, Ch. 286, L. 1959; R.C.M. 1947, 40-3905.

33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable either in installments or in one sum at the end of a period not in excess of 18 months from the initial date of the debt or all of any class or classes thereof determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of such affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of 5 years, except that such insurance may be continued for an additional period not exceeding 6 months in the case of default, extension, or recasting of the loan.

(5) The insurance shall be payable to the policyholder. Each payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965; R.C.M. 1947, 40-3906.

33-20-1106. Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union organized pursuant to the laws of the state of Montana or the Federal Credit Union Act, which shall be deemed the policyholder, to insure eligible members for amounts of insurance not in excess of the share balance of each member, based upon some plan which will preclude individual selection, for the benefit of someone other than the credit union or its officials and subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all the members of the credit union who meet standard physical requirement conditions of the insurer or all of any class or classes thereof determined by conditions pertaining to their age or to membership in the credit union or both.

(2) The premiums for the policy shall be paid by the policyholder, either wholly from the credit union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insured, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 25 members at the date of issue.

History: En. Sec. 334, Ch. 286, L. 1959; R.C.M. 1947, 40-3907.

33-20-1107 through 33-20-1110 reserved.

33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103, may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse shall be entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, subject to the requirements of subsections (1), (2), and (3) of [33-20-1208]. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse shall also be entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding 33-20-1208, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

History: En. Sec. 336, Ch. 286, L. 1959; amd. Sec. 1, Ch. 215, L. 1977; R.C.M. 1947, 40-3909.

Part 12

Group Contract Provisions

33-20-1201. Provisions required in group contracts. No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in 33-20-1202 through 33-20-1211 or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

(1) sections 33-20-1207 through 33-20-1211 shall not apply to policies issued to a creditor to insure debtors of such creditor;

(2) the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

History: En. Sec. 337, Ch. 286, L. 1959; R.C.M. 1947, 40-3910.

33-20-1202. Grace period. The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

History: En. Sec. 338, Ch. 286, L. 1959; R.C.M. 1947, 40-3911.

33-20-1203. Incontestability. The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime or unless it is contained in a written instrument signed by him.

History: En. Sec. 339, Ch. 286, L. 1959; R.C.M. 1947, 40-3912.

33-20-1204. Application — statements deemed representations. The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

History: En. Sec. 340, Ch. 286, L. 1959; R.C.M. 1947, 40-3913.

33-20-1205. Insurability. The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

History: En. Sec. 341, Ch. 286, L. 1959; R.C.M. 1947, 40-3914.

33-20-1206. Misstatement of age. The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

History: En. Sec. 342, Ch. 286, L. 1959; R.C.M. 1947, 40-3915.

33-20-1207. Payment of benefits. The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

History: En. Sec. 343, Ch. 286, L. 1959; R.C.M. 1947, 40-3916.

33-20-1208. Certificate. The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in 33-20-1209 through 33-20-1211.

History: En. Sec. 344, Ch. 286, L. 1959; R.C.M. 1947, 40-3917.

33-20-1209. Conversion on termination of eligibility. The group life insurance policy shall contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made and the first premium paid to the insurer within 31 days after such termination, and provided further that:

(1) the individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is or becomes eligible under any other group policy within 31 days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in

the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

History: En. Sec. 345, Ch. 286, L. 1959; R.C.M. 1947, 40-3918.

33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 5 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; and

(2) $2,000.

History: En. Sec. 346, Ch. 286, L. 1959; R.C.M. 1947, 40-3919.

33-20-1211. Death pending conversion. The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with 33-20-1209 or 33-20-1210 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

History: En. Sec. 347, Ch. 286, L. 1959; R.C.M. 1947, 40-3920.

33-20-1212. Notice as to conversion right. If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice, but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

History: En. Sec. 348, Ch. 286, L. 1959; R.C.M. 1947, 40-3921.

CHAPTER 21

CREDIT LIFE AND DISABILITY INSURANCE

Part 1 — General Provisions

Section

33-21-101. Short title.
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33-21-103. Definitions.
33-21-104. Existing insurance — choice of insurer.
33-21-105. Claims.
Sections 33-21-106 through 33-21-110 reserved.
33-21-111. Rules — enforcement of chapter.
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33-21-113. Penalties.

Part 2 — Policy Requirements

33-21-201. Form of issuance.
33-21-202. Amount.
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33-21-204. Policy or certificate delivered — time of delivery — provisions.
33-21-205. Filing, approval, and withdrawal of forms — rates — disapproval.
33-21-206. Premiums and refunds.
33-21-207. Issuance of policies.

Part 1

General Provisions

33-21-101. Short title. This chapter may be cited as "The Model Act for the Regulation of Credit Life Insurance and Credit Disability Insurance".

History: En. Sec. 393, Ch. 286, L. 1959; R.C.M. 1947, 40-4202.

33-21-102. Purpose and scope. (1) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

(2) All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than 10 years' duration.

History: (1)En. Sec. 392, Ch. 286, L. 1959; Sec. 40-4201, R.C.M. 1947; (2)En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969; amd. Sec. 1, Ch. 323, L. 1974; Sec. 40-4203, R.C.M. 1947; R.C.M. 1947, 40-4201, 40-4203.

33-21-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction or any successor to the right, title, or interest of such lender, vendor, or lessor.

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

History: En. Sec. 395, Ch. 286, L. 1959; R.C.M. 1947, 40-4204.

33-21-104. Existing insurance — choice of insurer. When credit life insurance or credit disability insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

History: En. Sec. 405, Ch. 286, L. 1959; R.C.M. 1947, 40-4214.

33-21-105. Claims. (1) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions or upon direction of such claimant to one specified.

(3) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

History: En. Sec. 404, Ch. 286, L. 1959; R.C.M. 1947, 40-4213.

33-21-106 through 33-21-110 reserved.

33-21-111. Rules — enforcement of chapter. The commissioner may, after notice and hearing, issue such rules as he deems appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules issued pursuant thereto and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

History: En. Sec. 406, Ch. 286, L. 1959; R.C.M. 1947, 40-4215.

33-21-112. Judicial review. Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by following the procedure set forth in 33-1-711.

History: En. Sec. 407, Ch. 286, L. 1959; R.C.M. 1947, 40-4216.

33-21-113. Penalties. In addition to any penalty provided by law, any person who violates an order of the commissioner after it has become final and while such order is in effect shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed $250 which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed $1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person guilty of such violation. Such order for suspension or revocation shall be subject to judicial review as provided in 33-1-711.

History: En. Sec. 408, Ch. 286, L. 1959; R.C.M. 1947, 40-4217.

Part 2

Policy Requirements

33-21-201. Form of issuance. Credit life insurance and credit disability insurance shall be issued only in the following forms:

(1) individual policies of life insurance issued to debtors on the term plan;

(2) individual policies of disability insurance issued to debtors on a term plan or disability provisions in individual life policies to provide such coverage;

(3) group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) group policies of disability insurance issued to creditors on a term plan insuring debtors or disability provisions in group life policies to provide such coverage.

History: En. Sec. 396, Ch. 286, L. 1959; R.C.M. 1947, 40-4205.

33-21-202. Amount. (1) The amount of credit life insurance shall be equal to the indebtedness, provided that the original indebtedness does not exceed the sum of $15,000. If the original indebtedness exceeds the sum of $15,000, the amount of credit life insurance shall not exceed the indebtedness. Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance, the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding 1 year may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

(2) The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall be equal to the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments, provided that the original indebtedness does not exceed the sum of $15,000. If the original indebtedness exceeds the sum of $15,000, the amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments.

History: En. Sec. 397, Ch. 286, L. 1959; amd. Sec. 2, Ch. 323, L. 1974; R.C.M. 1947, 40-4206.

33-21-203. Term. The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor; except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in 33-21-206.

History: En. Sec. 398, Ch. 286, L. 1959; R.C.M. 1947, 40-4207.

33-21-204. Policy or certificate delivered — time of delivery — provisions. (1) All credit life insurance and credit disability insurance sold shall be evidenced by an individual policy or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor at the time the indebtedness is incurred except as hereinafter provided.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the amount of payment by the debtor separately in connection with credit life insurance and credit disability insurance coverage, and a brief description of the coverage provided or to be provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for or notice of proposed insurance shall refer exclusively to insurance coverage and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth therein. Upon approval of the application, if any, or acceptance of the insurance and within 30 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that, upon acceptance by the insurer, the insurance shall become effective as of the date the indebtedness is incurred.

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer and the identity by name or otherwise of the person or persons insured, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverages including any exceptions, limitations, or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

History: En. Secs. 399, 400, Ch. 286, L. 1959; R.C.M. 1947, 40-4208, 40-4209.

33-21-205. Filing, approval, and withdrawal of forms — rates — disapproval. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders shall be filed with the commission of the state in which the policy is issued.

(2) The commissioner may within 30 days after the filing of all policies, certificates of insurance, notices of proposed insurance, applications for insurance, binders, endorsements, and riders, in addition to other requirements of law, disapprove any such form if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of such policy.

(3) If the commissioner notifies the insurer that the form does not comply with this section, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, and no application, binder, endorsement, or rider shall be issued or used until the expiration of 30 days after it has been so filed, unless the commissioner gives his prior written approval thereto.

(4) The commissioner may, at any time after a hearing, of which not less than 20 days' written notice was given to the insurer, withdraw his approval of any such form on any of such grounds.

(5) It is not lawful for the insurer to issue such forms or use them after the effective date of such withdrawal of approval.

(6) Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review.

History: En. Sec. 401, Ch. 286, L. 1959; R.C.M. 1947, 40-4210.

33-21-206. Premiums and refunds. (1) Each insurer issuing credit life insurance or credit disability insurance shall file with the commissioner its schedules of premium rates for use in connection with such insurance. Any insurer may revise such schedules from time to time and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by 33-21-205.

(2) Each individual policy, group certificate, or notice of proposed insurance of credit life insurance and credit disability insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of premium due shall be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds shall be filed with the commissioner.

(3) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967; R.C.M. 1947, 40-4211.

33-21-207. Issuance of policies. All policies of credit life insurance and credit disability insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein and shall be issued only through holders of licenses or authorizations issued by the commissioner.

History: En. Sec. 403, Ch. 286, L. 1959; R.C.M. 1947, 40-4212.

CHAPTER 22

DISABILITY INSURANCE

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Part 1

General Provisions

33-22-101. Exceptions to scope. Nothing in [parts 1 through 4 of this chapter, except 33-22-111 and 33-22-304], shall apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage therein;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or contracts supplemental thereto which contain only such provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard such contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance.

History: En. Sec. 351, Ch. 286, L. 1959; R.C.M. 1947, 40-4001.

33-22-102. Third-party ownership. The word "insured", as used in parts 1 through 4 of this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

History: En. Sec. 379, Ch. 286, L. 1959; R.C.M. 1947, 40-4029.

33-22-103. Violations. Violations of parts 1 through 4 of this chapter are subject to the penalties provided by 33-1-104.

History: En. Sec. 384, Ch. 286, L. 1959; R.C.M. 1947, 40-4034.

33-22-104 through 33-22-110 reserved.

33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist, or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: (1)En. Sec. 1, Ch. 172, L. 1967; amd. Sec. 1, Ch. 402, L. 1971; Sec. 40-4108, R.C.M. 1947; (2)En. Sec. 2, Ch. 172, L. 1967; Sec. 40-4109, R.C.M. 1947; R.C.M. 1947, 40-4108, 40-4109.

33-22-112. Disability insurance coverage of services of state institutions — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution, provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution.

(2) A disability insurance policy shall be deemed to be "issued in Montana" if the insured purchasing such disability insurance policy is, at the time of such purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section should appear in a disability insurance policy issued in Montana after February 14, 1973, such provision shall be deemed void and such disability insurance policy will be deemed to cover services rendered the insured in a Montana state institution if such services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of such disability policy, which would be paid for such services if rendered outside a Montana state institution.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038.

Part 2

Individual Policy Requirements

33-22-201. Format and content. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein.

(2) The time when the insurance takes effect and terminates shall be expressed therein.

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10 point with a lowercase unspaced alphabet length not less than 120 point.

(5) The "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in 33-22-204 through 33-22-231, shall be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof.

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

History: En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; R.C.M. 1947, 40-4002(1) thru (3), (5) thru (8).

33-22-202. Required provisions — captions — omissions — substitutions — order. (1) Except as provided in subsection (2) below, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the same appear, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the

approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions which are the subject of [40-4007 to 40-4030] or any corresponding provisions which are used in lieu thereof in accordance with such sections shall be printed in the consecutive order of the provisions in such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

History: En. Secs. 353, 378, Ch. 286, L. 1959; R.C.M. 1947, 40-4003, 40-4028.

33-22-203. Requirement of other jurisdictions — statutes — violation. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of parts 1 through 4 of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(3) No policy provision which is not subject to parts 1 through 4 of this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

(4) A policy delivered or issued for delivery to any person in this state in violation of parts 1 through 4 of this chapter shall be held valid but shall be construed as provided in parts 1 through 4 of this chapter. When any provision in a policy subject to parts 1 through 4 of this chapter is in conflict with any provision of parts 1 through 4 of this chapter, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of parts 1 through 4 of this chapter.

History: En. Secs. 380, 381, Ch. 286, L. 1959; R.C.M. 1947, 40-4030, 40-4031.

33-22-204. Entire contract — changes. There shall be a provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

History: En. Sec. 354, Ch. 286, L. 1959; R.C.M. 1947, 40-4004.

33-22-205. Time limit on certain defenses. (1) There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After 3 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 3-year period.

(2) No claim for loss incurred or disability (as defined in the policy) commencing after 3 years from the date of issue of this policy shall be reduced or denied

on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(2) Policy provision (1) of subsection (1) shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 3-year period or to limit the application of 33-22-222 through 33-22-226 in the event of misstatement with respect to age or occupation or other insurance.

(3) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of policy provision (1) of subsection (1) the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of 3 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

History: En. Sec. 355, Ch. 286, L. 1959; R.C.M. 1947, 40-4005.

33-22-206. Grace period. (1) There shall be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(2) A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision:

"Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

History: En. Sec. 356, Ch. 286, L. 1959; R.C.M. 1947, 40-4006.

33-22-207. Reinstatement. (1) There shall be a provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement."

(2) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

(a) until at least age 50; or

(b) in the case of a policy issued after age 44, for at least 5 years from its date of issue.

History: En. Sec. 357, Ch. 286, L. 1959; R.C.M. 1947, 40-4007.

33-22-208. Notice of claim. (1) There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 6 months after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of such office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

(2) In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given."

History: En. Sec. 358, Ch. 286, L. 1959; amd. Sec. 1, Ch. 189, L. 1974; R.C.M. 1947, 40-4008.

33-22-209. Claim forms. There shall be a provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."

History: En. Sec. 359, Ch. 286, L. 1959; R.C.M. 1947, 40-4009.

33-22-210. Proofs of loss. There shall be a provision as follows:

"Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required."

History: En. Sec. 360, Ch. 286, L. 1959; R.C.M. 1947, 40-4010.

33-22-211. Time of payment of claims. There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly), and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

History: En. Sec. 361, Ch. 286, L. 1959; R.C.M. 1947, 40-4011.

33-22-212. Payment of claims. (1) There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $.... (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

History: En. Sec. 362, Ch. 286, L. 1959; R.C.M. 1947, 40-4012.

33-22-213. Physical examination and autopsy. There shall be a provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

History: En. Sec. 363, Ch. 286, L. 1959; R.C.M. 1947, 40-4013.

33-22-214. Legal actions. There shall be a provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the written proof of loss is required to be furnished."

History: En. Sec. 364, Ch. 286, L. 1959; R.C.M. 1947, 40-4014.

33-22-215. Change of beneficiary. (1) There shall be a provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries or to any other changes in this policy."

(2) The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

History: En. Sec. 365, Ch. 286, L. 1959; R.C.M. 1947, 40-4015.

33-22-216 through 33-22-220 reserved.

33-22-221. Optional policy provisions — substitutes. Except as provided in 33-22-202(2), no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in 33-22-222 through 33-22-231, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

History: En. Sec. 366, Ch. 286, L. 1959; R.C.M. 1947, 40-4016.

33-22-222. Change of occupation. There may be a provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

History: En. Sec. 367, Ch. 286, L. 1959; R.C.M. 1947, 40-4017.

33-22-223. Misstatement of age. There may be a provision as follows:

"Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

History: En. Sec. 368, Ch. 286, L. 1959; R.C.M. 1947, 40-4018.

33-22-224. Other insurance in this insurer. (1) There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for .... (insert type of coverage or coverages) in excess of $.... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

(2) Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary, or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

History: En. Sec. 369, Ch. 286, L. 1959; R.C.M. 1947, 40-4019.

33-22-225. Insurance with other insurers — provision of service or expense incurred basis. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-226, there shall be added to the caption of the foregoing provision the phrase "—Expense Incurred Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: En. Sec. 370, Ch. 286, L. 1959; R.C.M. 1947, 40-4020.

33-22-226. Insurance with other insurers — other benefits. (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in 33-22-225, there shall be added to the caption of the foregoing provision the phrase "—Other Benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

History: En. Sec. 371, Ch. 286, L. 1959; R.C.M. 1947, 40-4021.

33-22-227. Relation of earnings to insurance. (1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of $200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50, or in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

History: En. Sec. 372, Ch. 286, L. 1959; R.C.M. 1947, 40-4022.

33-22-228. Unpaid premiums. There may be a provision as follows:

"Unpaid Premiums: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

History: En. Sec. 373; Ch. 286, L. 1959; R.C.M. 1947, 40-4023.

33-22-229. Conformity with state statutes. There may be a provision as follows:

"Conformity with State Statutes: Any provision of this policy which on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

History: En. Sec. 374, Ch. 286, L. 1959; R.C.M. 1947, 40-4024.

33-22-230. Illegal occupation. There may be a provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

History: En. Sec. 375, Ch. 286, L. 1959; R.C.M. 1947, 40-4025.

33-22-231. Intoxicants and narcotics. There may be a provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

History: En. Sec. 376, Ch. 286, L. 1959; R.C.M. 1947, 40-4026.

33-22-232. Renewal at option of insurer. Disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal on an individual basis shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.

History: En. Sec. 377, Ch. 286, L. 1959; R.C.M. 1947, 40-4027.

Part 3

Requirements for Certain Individual Coverages

33-22-301. Coverage of newborn under family policy. (1) Each policy of disability insurance or certificate issued thereunder which in addition to covering the insured also covers members of the insured's family shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants shall be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants

there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) No policy or certificate of insurance which in addition to covering the insured also covers members of the insured's family may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

History: (1), (2)En. 40-4002.1 by Sec. 2, Ch. 74, L. 1973; amd. Sec. 2, Ch. 83, L. 1974; Sec. 40-4002.1, R.C.M. 1947; (3)En. Sec. 352, Ch. 286, L. 1959; amd. Sec. 1, Ch. 74, L. 1973; amd. Sec. 1, Ch. 83, L. 1974; Sec. 40-4002, R.C.M. 1947; R.C.M. 1947, 40-4002.1, 40-4002(4).

33-22-302. Age limits — effect on coverage. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

History: En. Sec. 382, Ch. 286, L. 1959; R.C.M. 1947, 40-4032.

33-22-303 reserved.

33-22-304. Continuation of coverage for handicapped — individual contracts. (1) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738, 40-3740.

Part 4

Franchise Disability Insurance

33-22-401. Franchise disability insurance. (1) Disability insurance on a franchise plan is hereby declared to be that form of disability insurance:

(a) issued to:

(i) 5 or more employees of any corporation, partnership, or individual employer or any governmental corporation, agency, or department thereof; or

(ii) 10 or more members, employees, or employees of members of any trade or professional association or of a labor union or of any other association having had an active existence for at least 2 years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;

(b) where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members or by some designated person acting on behalf of such employer, association, or union.

(2) The term "employees" as used herein may be deemed to include the officers, managers, and employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

History: En. Sec. 383, Ch. 286, L. 1959; R.C.M. 1947, 40-4033.

Part 5

Group Disability Insurance

33-22-501. Group disability insurance defined — eligible groups. Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons and issued upon the following bases:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of per-

sons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subsection (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(intro.), (1) thru (5).

33-22-502. Required provisions of group policies. Each such group disability insurance policy shall contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

History: En. Sec. 386, Ch. 286, L. 1959; amd. Sec. 4, Ch. 74, L. 1973; amd. Sec. 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4102(part).

33-22-503. Continuation of benefits to dependents. Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

History: En. Sec. 385, Ch. 286, L. 1959; amd. Sec. 3, Ch. 74, L. 1973; amd. Sec. 3, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(6).

33-22-504. Newborn infant coverage. (1) No group disability policy or certificate of insurance which, in addition to covering persons in the insured group, also covers members of such person's family may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth.

(2) If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group.

(3) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

History: En. Secs. 385, 386, Ch. 286, L. 1959; amd. Secs. 3, 4, Ch. 74, L. 1973; amd. Secs. 3, 4, Ch. 83, L. 1974; R.C.M. 1947, 40-4101(7), 40-4102(part).

33-22-505. Direct payment of hospital and medical services. Any group disability policy may on request by the group policyholder provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 387, Ch. 286, L. 1959; R.C.M. 1947, 40-4103.

33-22-506. Continuation of coverage for handicapped — group contracts. (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739, 40-3740.

Part 6

Blanket Disability Insurance

33-22-601. Blanket disability insurance defined. Blanket disability insurance is hereby declared to be that form of disability insurance covering groups of persons as enumerated in one of the following subsections:

(1) under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on such common carrier or such means of transportation;

(2) under a policy or contract issued to an employer, who shall be deemed the policyholder, covering all employees, dependents, or guests, defined by reference to specified hazards incident to the activities or operations of the employer or any class of employees, dependents, or guests similarly defined;

(3) under a policy or contract issued to a school or other institution of learning, camp or sponsor thereof; or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or campers. Supervisors and employees may be included.

(4) under a policy or contract issued in the name of any religious, charitable, recreational, educational, or civic organization, which shall be deemed the policyholder, covering participants in activities sponsored by the organization;

(5) under a policy or contract issued to a sports team or sponsors thereof, which shall be deemed the policyholder, covering members, officials, and supervisors;

(6) under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, or agency having jurisdiction thereof, which shall be deemed the policyholder, covering all of the members of such fire department or group;

(7) under a policy or contract issued to cover any other risk or class of risks which in the discretion of the commissioner may be properly eligible for blanket disability insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

History: En. Sec. 388, Ch. 286, L. 1959; R.C.M. 1947, 40-4104.

33-22-602. Required provisions of blanket policies. Any insurer authorized to write disability insurance in this state shall have the power to issue blanket disability insurance. No such blanket policy may be issued or delivered in this state unless a copy of the form thereof shall have been filed in accordance with 33-1-501. Every such blanket policy shall contain provisions which in the opinion of the commissioner are at least as favorable to the policyholder and the individual insured as the following, a provision that:

(1) the policy and the application shall constitute the entire contract between the parties and that all statements made by the policyholder shall, in absence of fraud, be deemed representations and not warranties and that no such statements shall be used in defense to a claim under the policy, unless it is contained in a written application;

(2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(3) the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(4) in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require and that in the case of claim for any other loss,

written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

(5) all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof;

(6) the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(7) no action at law or in equity shall be brought to recover under the policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

History: En. Sec. 389, Ch. 286, L. 1959; R.C.M. 1947, 40-4105.

33-22-603. Application and certificates not required. An individual application shall not be required from a person covered under a blanket disability policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

History: En. Sec. 390, Ch. 286, L. 1959; R.C.M. 1947, 40-4106.

33-22-604. Payment of claims — discharge. (1) All benefits under any blanket disability policy shall be payable to the person insured or to his designated beneficiary or beneficiaries or to his estate; except that if the person insured be a minor or mental incompetent, such benefits may be made payable to his parent, guardian, or other person actually supporting him; or if the entire cost of the insurance has been borne by the employer such benefits may be made payable to the employer. Provided, however, that the policy may provide that all or any portion of any indemnities provided by such policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person.

(2) Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

History: En. Sec. 391, Ch. 286, L. 1959; R.C.M. 1947, 40-4107.

Part 7 reserved

Part 8

Extended Health Insurance

33-22-801. Purpose. It is the purpose of this part to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965; R.C.M. 1947, 40-5401.

33-22-802. Definitions. Wherever used in this part, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(1) "Association" means a voluntary unincorporated association formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this part in this or any other state having legislation enabling the issuance of insurance of the type provided in this part.

(2) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(3) "Extended health insurance" means hospital, surgical, and medical expense insurance provided by a policy issued as provided by this part.

History: En. Sec. 2, Ch. 61, L. 1965; R.C.M. 1947, 40-5402.

33-22-803. Joint underwriting association for group disability insurance authorized. (1) Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued, and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing, and administering such insurance. The policyholder may be an association, a trustee, or any other person.

(2) A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this part shall be another form of group disability insurance.

History: En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).

33-22-804. Corporate powers of association — examination of books. (1) Any association formed for the purposes of this part may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association made upon a managing agent, any member thereof, or any agent authorized by appointment to receive service of process shall have the same force and effect as if such service had been made upon all members of the association.

(2) Such association's books and records shall also be subject to examination under the provisions of 33-1-315, 33-1-316, and 33-1-401 through 33-1-413, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965; R.C.M. 1947, 40-5405.

33-22-805. Documents to be filed with commissioner by association. The articles of association of any association formed in accordance with this part, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part).

33-22-806. Limited exemption from prosecution. No act done, action taken, or agreement made pursuant to the authority conferred by this part shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965; R.C.M. 1947, 40-5408.

33-22-807 through 33-22-810 reserved.

33-22-811. Policy provisions concerning additional coverage. Any policy developed pursuant to 33-22-803 may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical, or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100% of covered expenses which he is required to pay. Any insurer issuing individual policies providing extended hospital, surgical, or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision.

History: En. Sec. 3, Ch. 61, L. 1965; R.C.M. 1947, 40-5403(part).

33-22-812. Policy forms to be approved — procedure — disapproval. (1) The forms of the policies, applications, certificates or other evidence of insurance coverage, and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application, or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof.

(2) The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading, or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided.

(3) In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state, including any differing operating methods of the insurers joining in the issue of the policy.

(4) In exercising the powers conferred upon him by this part, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

(5) The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

33-22-813. Sale area — agents. (1) Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancelable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

(2) Notwithstanding the provisions of 33-17-215, any person licensed to transact disability insurance as an insurance agent may transact extended health insurance and may be paid a commission thereon.

History: (1)En. Sec. 3, Ch. 61, L. 1965; Sec. 40-5403, R.C.M. 1947; (2)En. Sec. 4, Ch. 61, L. 1965; Sec. 40-5404, R.C.M. 1947; R.C.M. 1947, 40-5403(part), 40-5404.

33-22-814. Deceptive practices prohibited. The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued pursuant to this part shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965; R.C.M. 1947, 40-5407(part).

33-22-815. Report. The association shall submit an annual report to the commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this part, and the calendar year experience applicable to such insurance offered under this part, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

33-22-816. Adjustments for federal benefits. If and when a program of hospital, surgical, and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this part shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

History: En. Sec. 6, Ch. 61, L. 1965; R.C.M. 1947, 40-5406(part).

CHAPTER 23

CASUALTY INSURANCE

Part 1 — General Provisions

Section
33-23-101. Waiver of defense of sovereign immunity required.
33-23-102. Immunity defense prohibited when liability insured — existence of insurance not to be made evident — reduction of award to policy limits.

Part 2 — Motor Vehicle Liability

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.
Sections 33-23-203 through 33-23-210 reserved.
33-23-211. Limitations on basis for cancellation.
33-23-212. Notice required for cancellation — exception — statement that insurer will specify reason upon request — penalty.
33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance.
33-23-214. Advance notice required for nonrenewal — exceptions — exemptions.
33-23-215. No liability for statements in connection with cancellation or nonrenewal.
33-23-216. Retention and proof of notice.

Part 3 — Professional Liability

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited.
33-23-302. Cancellation or increase of premium rates — sixty days' written notice required.
Sections 33-23-303 through 33-23-310 reserved.
33-23-311. Information required of professional liability insurers — submission.

Part 4 — Homes

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty.

Part 1

General Provisions

33-23-101. Waiver of defense of sovereign immunity required. All contracts or policies of casualty insurance covering state-owned properties or state risks must contain an agreement on the part of the insurer waiving all right to raise the defense of immunity from suit. No money may be paid out of the state treasury to any person, firm, or corporation as a consideration or premium on any such policy or contract of casualty insurance unless the policy or contract contains such an agreement.

History: En. Sec. 411, Ch. 286, L. 1959; amd. Sec. 5, Ch. 234, L. 1977; R.C.M. 1947, 40-4401.

33-23-102. Immunity defense prohibited when liability insured — existence of insurance not to be made evident — reduction of award to policy limits. (1) Whenever an insurer accepts any premium, money, or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer may raise the defense of immunity from suit in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of immunity is void.

(2) No attempt may be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff.

(3) If the court determines that the defendant could have successfully raised the defense of immunity and if the verdict exceeds the limits of the applicable

insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963; amd. Sec. 6, Ch. 234, L. 1977; R.C.M. 1947, 40-4402.

Part 2

Motor Vehicle Liability

33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured. (1) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom.

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967; amd. Sec. 2, Ch. 526, L. 1975; R.C.M. 1947, 40-4403.

33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value. Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision, and reimbursement shall be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969; R.C.M. 1947, 40-4404.

33-23-203 through 33-23-210 reserved.

33-23-211. Limitations on basis for cancellation. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) nonpayment of premium; or

(b) the driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(2) This section shall not apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding $100 shall not be deemed a cancellation of the coverage or of the policy.

(4) This section shall not apply to nonrenewal.

History: En. Sec. 3, Ch. 262, L. 1971; R.C.M. 1947, 40-4407.

33-23-212. Notice required for cancellation — exception — statement that insurer will specify reason upon request — penalty. (1) Notwithstanding any other provision of this code, no cancellation by an insurer of an auto liability insurance policy shall be effective prior to the mailing or delivery to the named insured at the address shown in the policy of a written notice of the cancellation stating when, not less than 30 days after the date of such mailing or delivery, the date the cancellation shall become effective.

(2) No notice of cancellation of a policy to which 33-23-211 applies shall be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(3) Subsection (2) shall not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine of not exceeding $500 for each violation thereof.

History: En. Secs. 1, 4, 7, Ch. 262, L. 1971; R.C.M. 1947, 40-4405, 40-4408, 40-4411.

33-23-213. Notice to insured of ground for cancellation — commissioner to ensure compliance. Whenever an insurer gives notice of cancellation of an automobile liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon him by law as may be necessary to ensure compliance with this section.

History: En. Sec. 2, Ch. 262, L. 1971; R.C.M. 1947, 40-4406.

33-23-214. Advance notice required for nonrenewal — exceptions — exemptions. (1) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least 30 days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of his request, the reason or reasons for such nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies.

(3) This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy or the renewal thereof or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(4) This section shall not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies;

(c) if the insured's agent or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(6) A notice of nonrenewal of a policy under this section, which policy has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211.

History: En. Sec. 5, Ch. 262, L. 1971; amd. Sec. 1, Ch. 249, L. 1975; R.C.M. 1947, 40-4409.

33-23-215. No liability for statements in connection with cancellation or nonrenewal. There shall be no liability on the part of and no cause of action of any nature shall arise against the insurance commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal for any statement made by any of them in any written notice of cancellation or nonrenewal or for statements made or evidence submitted at any hearings conducted in connection therewith.

History: En. Sec. 8, Ch. 262, L. 1971; R.C.M. 1947, 40-4412.

33-23-216. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter shall be retained for a period of 3 years by the insurer or his agent within this state and shall be made available within this state for examination or inspection by the commissioner or his agents at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's latest known address shall be sufficient proof of notice.

History: En. Sec. 6, Ch. 262, L. 1971; amd. Sec. 2, Ch. 469, L. 1977; R.C.M. 1947, 40-4410.

Part 3

Professional Liability

33-23-301. Cancellation or increase of premium rates by reason of unfounded claims prohibited. Whenever an action for damages is filed against or a claim or demand for damages is made to an insurer of a physician and surgeon, dentist, registered nurse, nursing home administrator, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or against a licensed hospital or long-term care facility as the employer of any such person, in an action, claim, or demand for error, omission, professional negligence, or performance of services without consent, and such action, claim, or demand is later determined to be unfounded and no payment is made by the insurer to the claimant on behalf of such licensee or licensed hospital or long-term care facility or is finally determined to establish nonliability to plaintiff by such licensee or licensed hospital or long-term care facility, the fact of such litigation, claim, or demand shall not be a ground for cancellation or for any increase in insurance premium rates of the professional liability insurance during the term of the policy.

History: En. Sec. 1, Ch. 210, L. 1971; amd. Sec. 1, Ch. 303, L. 1973; R.C.M. 1947, 40-4413.

33-23-302. Cancellation or increase of premium rates — sixty days' written notice required. Any insurer who insures a physician and surgeon, dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, duly licensed as such under the laws of this state, or a licensed hospital or long-term care facility as the employer of any such person against liability for error, omission, professional negligence, or performance of services without consent shall not cancel the policy so insuring such person or increase the premium rates thereon without first providing the insured 60 days' written notice of the insurer's intention to cancel the policy or increase the premium rates.

History: En. Sec. 1, Ch. 14, L. 1971; amd. Sec. 2, Ch. 303, L. 1973; R.C.M. 1947, 40-4414.

33-23-303 through 33-23-310 reserved.

33-23-311. Information required of professional liability insurers — submission. (1) For purposes of this section, "profession" means the occupations engaged in by physicians, osteopaths, registered nurses, licensed practical nurses, dentists, optometrists, podiatrists, chiropractors, hospitals, attorneys, certified public accountants, public accountants, architects, veterinarians, pharmacists, and professional engineers.

(2) Each insurance company engaged in issuing professional liability insurance in the state of Montana shall include the following information, by profession, from its experience in the state of Montana, in its annual statement to the commissioner:

(a) the number of insureds as of December 31 of the calendar year next preceding;

(b) the amount of earned premiums paid by the insureds during the calendar year next preceding;

(c) the number of claims made against the insurer's insureds and the number of claims outstanding as of December 31 of the calendar year next preceding;

(d) the number of claims paid by the insurer during the calendar year next preceding and the total monetary amount thereof;

(e) the number of lawsuits filed against the insurer's insureds and the number of insureds included therein during the calendar year next preceding;

(f) the number of lawsuits previously filed against the insurer's insureds which were dismissed without settlement or trial and the number of insureds included therein during the calendar year next preceding;

(g) the number of lawsuits previously filed against the insurer's insureds which were settled without trial, the total monetary amount paid as settlements in such settled cases, and the number of insureds included therein during the calendar year next preceding;

(h) the number of lawsuits against the insurer's insureds which went to trial during the calendar year next preceding and the number of such cases ending in the following:

(i) judgment or verdict for the plaintiff;

(ii) judgment or verdict for the defendant;

(iii) other;

(i) the total monetary amount paid out, in those lawsuits specified in subsection (h);

(j) the total number of the insurer's insureds included in those lawsuits specified in subsection (h);

(k) the number of new trials granted during the calendar year next preceding;

(l) the number of lawsuits pending on appeal as of December 31 of the next preceding calendar year; and

(m) such other information and statistics as the commissioner considers necessary.

(3) The commissioner shall, within 60 days of request, submit in writing to the appropriate licensing authority the data and information furnished him pursuant to this section relevant to the particular profession or facility.

History: (1)En. 40-2827 by Sec. 1, Ch. 212, L. 1977; Sec. 40-2827, R.C.M. 1947; (2)En. 40-2828 by Sec 2, Ch. 212, L. 1977; Sec. 40-2828, R.C.M. 1947; (3)En. 40-2829 by Sec. 3, Ch. 212, L. 1977; Sec. 40-2829, R.C.M. 1947; R.C.M. 1947, 40-2827, 40-2828, 40-2829.

Part 4

Homes

33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) No insurer shall cancel or refuse to renew any policy insuring private residences including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile without first giving to the insured 30 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

(2) Violation of this section is punishable under 33-1-104.

History: En. Secs. 1, 2, Ch. 374, L. 1971; amd. Secs. 1, 2, Ch. 82, L. 1975; R.C.M. 1947, 40-4415, 40-4416.

CHAPTER 24

PROPERTY INSURANCE

Part 1 — General Provisions

Section

33-24-101. Measure of the indemnity — rescission for fraud.
33-24-102. Insuring improvements — insurance equal to true value.
33-24-103. Specific valuation — loss equal to insured value — alternative methods.

Part 1

General Provisions

33-24-101. Measure of the indemnity — rescission for fraud. If there is no valuation in the policy and unless a basis more favorable to the insured is provided for in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable, of replacing the thing lost or injured, in the condition in which it was at the time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

History: En. Sec. 409, Ch. 286, L. 1959; R.C.M. 1947, 40-4301.

33-24-102. Insuring improvements — insurance equal to true value. Whenever any policy of insurance shall be written to insure any improvements upon real property in this state against loss by fire, tornado, or lightning and the property insured shall be wholly destroyed, without criminal fault on the part of the insured or his assigns, the amount of insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance shall be prima facie evidence that the party paying such insurance premium is the owner of the property insured; provided, that any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon.

History: En. Sec. 410, Ch. 286, L. 1959; R.C.M. 1947, 40-4302.

33-24-103. Specific valuation — loss equal to insured value — alternative methods. (1) This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage.

(2) If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets.

(3) An insurer who wishes to vary this requirement and use a different method for computation of loss, the policy, and any application for such a policy shall set forth in type of prominent size the actual method of loss computation to be employed.

History: En. 40-4303 by Sec. 1, Ch. 96, L. 1974; R.C.M. 1947, 40-4303.

CHAPTER 25

TITLE INSURANCE

Part 1 — General Provisions

Section
33-25-101. Guaranty fund — investments.
33-25-102. Rates filed with commissioner.
33-25-103. Policy based on title evidence.

Part 1

General Provisions

33-25-101. Guaranty fund — investments. A title insurer shall establish and maintain the guaranty fund required under 33-2-517 and may invest in necessary plant and equipment and in other investments as authorized under 33-2-851.

History: En. Sec. 417, Ch. 286, L. 1959; R.C.M. 1947, 40-4603.

33-25-102. Rates filed with commissioner. (1) Every title insurer shall file with the commissioner a complete schedule of risk rates to be charged by it for title insurance as to property located in this state.

(2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.

(3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the commissioner.

(4) Title insurers lawfully transacting business in this state on January 1, 1961, shall comply with the provisions of this section within 90 days thereafter.

History: En. Sec. 416, Ch. 286, L. 1959; R.C.M. 1947, 40-4602.

33-25-103. Policy based on title evidence. (1) No title insurance policy as to property in this state shall be issued by any insurer unless based upon evidence of the condition of title certified in writing as of the date of the policy by some person, firm, or corporation holding a certificate of authority issued under 37-52-304 to engage in the title abstracting business in the county in which the property is located. This provision shall not apply as to title insurance policies issued upon the basis of an opinion of an attorney, duly authorized to practice law in this state, as to the condition of the title following a review by such attorney of pertinent title records or abstracts and issued through a licensed title insurance agent who was so licensed and was regularly procuring title insurance policies issued upon such basis up to January 1, 1961.

(2) An insurer issuing any policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder.

History: En. Sec. 415, Ch. 286, L. 1959; R.C.M. 1947, 40-4601.

CHAPTER 26

SURETYSHIP

Part 1 — Surety Insurance

Section

33-26-101. Corporations as sureties.
33-26-102. Requisites of undertakings or bonds of individuals.
33-26-103. Rights of surety insurer to give bond.
33-26-104. Surety insurers as sole surety on official bonds — release.
33-26-105. Surety companies not permitted to furnish bonds where indemnity required.
33-26-106. Cost of surety bond to be allowed in account of officer.
33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety.

Part 1

Surety Insurance

33-26-101. Corporations as sureties. (1) In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any law of this state, any corporation with a paid-up capital of not less than $100,000, incorporated under the laws of this state for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may become and shall be accepted as security or as a sole and sufficient security upon such undertaking or bond, and such corporate surety shall be subject to all liabilities and entitled to all the rights of natural persons as such sureties.

(2) Whenever the liabilities of any such corporation shall exceed its assets, the state auditor shall require the deficiency to be paid up in 60 days, and if it is not so paid up, then he shall issue a certificate showing the extent of such deficiency, and he shall publish the same once a week for 3 weeks in a daily paper published in the town or city wherein the principal office of such corporation is, and until such deficiency is paid up such company shall not be accepted as a surety on any undertaking or bond. In estimating the condition of any such company, the state auditor shall allow as assets only such as are allowed under existing laws at the time and shall charge as liabilities, in addition to 80% of the capital stock, all outstanding indebtedness of the company and the premium reserved equal to 50% of the premiums charged by said company on all risks then in force.

History: Ap. p. Sec. 1, p. 70, L. 1893; re-en. Sec. 1900, C. Civ. Proc. 1895; re-en. Sec. 7193, Rev. C. 1907; re-en. Sec. 9826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1056; re-en. Sec. 9826, R.C.M. 1935; Sec. 93-8711, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8711, 93-8712(part).

33-26-102. Requisites of undertakings or bonds of individuals. In all cases where an undertaking or bond or undertaking with sureties is authorized or required by any law of this state, the officer taking the same must, except in the case of corporations as mentioned in 33-26-101, require the sureties to accompany it with an affidavit that they are each responsible and are residents and householders or freeholders within the state and are each worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution. When the amount specified in the undertaking or bond exceeds $3,000 and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond if the whole amount be equivalent to that of two sufficient sureties.

History: Ap. p. Sec. 433, p. 131, Bannack Stat.; re-en. Sec. 593, p. 157, Cod. Stat. 1871; re-en. Sec. 523, p. 177, L. 1877; re-en. Sec. 523, 1st Div. Rev. Stat. 1879; re-en. Sec. 540, 1st Div. Comp. Stat. 1887; en. Sec. 1899, C. Civ. Proc. 1895; re-en. Sec. 7192, Rev. C. 1907; re-en. Sec. 9825, R.C.M. 1921; re-en. Sec. 9825, R.C.M. 1935; Sec. 93-8710, R.C.M. 1947; Ap. p. Sec. 2, p. 70, L. 1893; re-en. Sec. 1901, C. Civ. Proc. 1895; re-en. Sec. 7195, Rev. C. 1907; re-en. Sec. 9827, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1057; re-en. Sec. 9827, R.C.M. 1935; Sec. 93-8712, R.C.M. 1947; R.C.M. 1947, 93-8710, 93-8712(part).

33-26-103. Rights of surety insurer to give bond. A surety insurer authorized as such under this code shall have the power to become the surety on bonds and undertakings required by law, subject to all the rights and liabilities of private persons. This section shall not be deemed to limit in any way the powers, obligations, and liabilities of such insurers as provided for in other provisions of this code.

History: En. Sec. 412, Ch. 286, L. 1959; R.C.M. 1947, 40-4501.

33-26-104. Surety insurers as sole surety on official bonds — release. (1) Whenever any bond, undertaking, recognizance, or other obligation is by law or the charter, ordinance, or rules of any municipality, board, body, organization or public officer required or permitted to be made, given, tendered, or filed, with surety or sureties, and whenever the performance of any act, duty, or obligation or the refraining from any act is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance, or guaranty may be executed by a surety insurer qualified to act as surety or guarantor as in this code provided. Such execution by such insurer of such bond, undertaking, obligation, recognizance, or guaranty shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, or rule that such bond, undertaking, obligation, recognizance, or guaranty shall be executed by one surety or by one or more sureties or that such surety shall be a resident or householder or freeholder, or either or both, or possessed of any other qualifications. All courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance, or guaranty when so executed by such insurer, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, or rule.

(2) A surety insurer may be released from its liability on a bond referred to in this section upon the same terms and conditions as are by law prescribed for the release of individual sureties.

History: En. Secs. 413, 414, Ch. 286, L. 1959; R.C.M. 1947, 40-4502, 40-4503.

33-26-105. Surety companies not permitted to furnish bonds where indemnity required. No foreign or other surety company shall be permitted to furnish the bond for any state, county, or city official, where such company requires in addition to the payment of reasonable premiums any indemnity or other security.

History: En. Sec. 1, Ch. 6, L. 1911; re-en. Sec. 6234, R.C.M. 1921; re-en. Sec. 6234, R.C.M. 1935; R.C.M. 1947, 40-1725.

33-26-106. Cost of surety bond to be allowed in account of officer. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond may, whenever such person or corporation has given any such surety company as surety upon such bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety.

History: En. Sec. 23, Ch. 139, L. 1909; re-en. Sec. 6228, R.C.M. 1921; re-en. Sec. 6228, R.C.M. 1935; R.C.M. 1947, 40-1724.

33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety. It shall be lawful for any executor, administrator, guardian, receiver, trustee, or other party of whom a bond, undertaking, or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a bank, savings bank, safe-deposit, or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof without the written consent of such surety or sureties or an order of court or a judge therof made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

History: En. Sec. 1, Ch. 146, L. 1943; R.C.M. 1947, 40-1703.

CHAPTERS 27 THROUGH 29

RESERVED

CHAPTER 30

HEALTH SERVICE CORPORATIONS

Part 1 — General Provisions

Section
33-30-101. Definitions.
33-30-102. Application of this chapter — construction of other related laws.
33-30-103. Purposes of health service corporation.
33-30-104. No profit organization may be a health service corporation.
33-30-105. Examination of a health service corporation.
33-30-106. Montana Administrative Procedure Act applicable.
Sections 33-30-107 through 33-30-110 reserved.
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33-30-201. Reserves — requirements suspended.
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33-30-303. Grievance procedure for members.
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33-30-305. Prohibited trade practices.
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33-30-312. Enrollment representative — filing with and approval by commissioner — license.
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33-30-1001. Newborn infants covered by insurance by health service corporation.
33-30-1002. Disability coverage of services of state institutions — provision void — rate of payment.
33-30-1003. Continuation of coverage for handicapped — individual contracts.
33-30-1004. Continuation of coverage for handicapped — group contracts.

Part 1

General Provisions

33-30-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries.

History: En. 40-5901 by Sec. 1, Ch. 319, L. 1975; R.C.M. 1947, 40-5901(1) thru (3).

33-30-102. Application of this chapter — construction of other related laws. (1) All health service corporations heretofore or hereafter organized are subject to the provisions of this chapter.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this chapter, the latter shall prevail.

History: En. 40-5902 by Sec. 2, Ch. 319, L. 1975; R.C.M. 1947, 40-5902.

33-30-103. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) (a) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(b) acting as agent or intermediary for other health service corporations, for governmental body or agency, or for other corporations, associations, partnerships, or individuals in the field of health care and services; and

(2) research, education, or related activity to further objects within the purview of this chapter.

History: En. 40-5903 by Sec. 3, Ch. 319, L. 1975; R.C.M. 1947, 40-5903.

33-30-104. No profit organization may be a health service corporation. No group, association, or organization created for or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or indirectly, as a health service corporation under this chapter.

History: En. 40-5904 by Sec. 4, Ch. 319, L. 1975; R.C.M. 1947, 40-5904.

33-30-105. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) Each health service corporation examined, its officers, employees, and agents, shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(3) The commissioner or his examiner shall make a verified report of the examination.

(4) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(5) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in his office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant one with respect to the report and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

History: En. 40-5912 by Sec. 12, Ch. 319, L. 1975; R.C.M. 1947, 40-5912.

33-30-106. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under this chapter are subject to judicial review under and in accordance with the Montana Administrative Procedure Act.

History: En. 40-5916 by Sec. 16, Ch. 319, L. 1975; R.C.M. 1947, 40-5916.

33-30-107 through 33-30-110 reserved.

33-30-111. Notice of violation — conference. If the commissioner shall for any reason have cause to believe that violation of this chapter has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives or other persons who appear to be involved in the suspected violation to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

History: En. 40-5920 by Sec. 20, Ch. 319, L. 1975; R.C.M. 1947, 40-5920.

33-30-112. Cease and desist order. (1) The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist from engaging in any act or practice in violation of the provisions of this chapter.

(2) Within 15 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. These hearings shall be conducted under the Montana Administrative Procedure Act.

History: En. 40-5921 by Sec. 21, Ch. 319, L. 1975; R.C.M. 1947, 40-5921.

33-30-113. Injunctive relief. In the case of any violation of the provisions of this chapter, if the commissioner elects not to issue a cease and desist order or in the event of noncompliance with a cease and desist order issued under this chapter, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief in the district court of the county in which the violation occurs or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of Title 27, chapter 19 or 20, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

History: En. 40-5922 by Sec. 22, Ch. 319, L. 1975; R.C.M. 1947, 40-5922.

Part 2

Finance

33-30-201. Reserves — requirements suspended. (1) The corporation shall maintain at all times unobligated funds adequate to:

(a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner shall be maintained in an amount not less than:

(a) $500,000; or

(b) an amount equal to 1 month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

(3) If the reserves are not equal to the average in subsection (2)(b), they must have been increased during the preceding 12 months by an amount equal to 1% of the gross dues or fee income during that period.

(4) The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers.

(5) The commissioner may decrease or suspend the requirements of this section if he finds that the action is in the best interest of the members of the corporation.

History: En. 40-5905 by Sec. 5, Ch. 319, L. 1975; R.C.M. 1947, 40-5905.

33-30-202. Annual report. All corporations subject to the provisions of this chapter shall make and file annually with the commissioner, on or before March 1 of each year, a report under oath setting forth:

(1) the name of the corporation;

(2) the address of its registered office in this state and the name of its registered agent at that address;

(3) the names and addresses of its directors and officers;

(4) a brief statement of the character of the affairs which the corporation is actually conducting;

(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves;

(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant;

(7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner.

History: En. 40-5911 by Sec. 11, Ch. 319, L. 1975; R.C.M. 1947, 40-5911.

33-30-203. Premium tax exemption. A health service corporation is exempt from all premium taxes.

History: En. 40-5915 by Sec. 15, Ch. 319, L. 1975; R.C.M. 1947, 40-5915.

33-30-204. Fees. (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) enrollment representative's license:

(i) application for original license including examination and issuance of license $10

(ii) annual renewal .... $ 5

(b) filing any other statement or report .... $ 1

(c) for a certified copy of any document or other paper filed in the office of the commissioner, per page .... $.50

(d) for the certificate and for affixing the seal thereto .... $ 1

(e) filing of a membership contract $10

(f) filing of a membership contract package $25

(g) filing annual report, a fee of 20 cents for each individual or family unit the corporation covered at the close of the year to which the annual report is applicable, except that the minimum fee payable upon filing of an annual report is $100.

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fees and license fees received by him under this section.

History: En. 40-5917 by Sec. 17, Ch. 319, L. 1975; R.C.M. 1947, 40-5917.

Part 3

Operations

33-30-301. Forms — filing, approval, hearing on disapproval, appeal. (1) A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with the commissioner within 30 days after that form is first used. When a form does not comply with the requirements of this chapter, the commissioner shall notify the corporation in writing of that failure and include the reasons for his opinion. Unless the corporation requests a hearing within 10 days, notice by the commissioner disallows use of this form by the corporation. If the corporation challenges the commissioner's disallowance of a form it shall request a hearing on that issue. The commissioner shall schedule a hearing as soon as practicable but not less than 15 days from the date of the request. If the commissioner finds, after the hearing, that the form is not in compliance with this chapter, he may disapprove the form and issue a final order to that effect. Notice of disapproval, including the grounds for disapproval, shall be presented to the corporation not less than 30 days after the hearing. The final order is effective 30 days after the hearing.

(2) A corporation whose forms have been ordered discontinued by the commissioner may appeal, within 15 days after an order, to a district court of the state. The court, upon filing of the proper petition, shall cause the forms and orders of the commissioner to be brought before it, and upon hearing of the case, the court shall either affirm or reverse and vacate the order of the commissioner.

(3) The court may suspend or stay a final order of the commissioner under this section pending trial of the issues or the appeal.

History: En. 40-5906 by Sec. 6, Ch. 319, L. 1975; R.C.M. 1947, 40-5906.

33-30-302. Allowed contracts. (1) A corporation subject to the provisions of this chapter may enter into contracts for the rendering of health services on behalf of its members or beneficiaries with:

(a) hospitals maintained by a governmental body or agency;

(b) hospitals maintained by a nonprofit corporation organized for hospital purposes; or

(c) other corporations, organizations, associations, partnerships, or individuals furnishing health services.

(2) A health service corporation may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

(a) the transfer of members or beneficiaries;

(b) the reciprocal joint provisions of benefits to the members or beneficiaries of the corporation and of those other organizations or corporations; or

(c) other joint undertakings the corporation's board of directors approves.

History: En. 40-5907 by Sec. 7, Ch. 319, L. 1975; R.C.M. 1947, 40-5907.

33-30-303. Grievance procedure for members. Any individual member of a corporation, subject to the provisions of this chapter, who believes himself to be aggrieved by any act or omission of the corporation or its officers, directors, or employees may file a statement in writing of his grievance in the office of the commissioner, and the commissioner may investigate the grievance. No investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the involved corporation.

History: En. 40-5913 by Sec. 13, Ch. 319, L. 1975; R.C.M. 1947, 40-5913.

33-30-304. Nonliability for injuries caused by contractees. A health service corporation is not liable for injuries resulting from neglect, misfeasance, malfeasance, or malpractice on the part of any person, organization, agency, or corporation rendering health services to the health service corporation's members and beneficiaries.

History: En. 40-5914 by Sec. 14, Ch. 319, L. 1975; R.C.M. 1947, 40-5914.

33-30-305. Prohibited trade practices. In order to regulate trade practices of health service corporations the following practices are prohibited:

(1) No person may make, issue, circulate, or cause to be made, issued, or circulated any estimate, circular, or statement misrepresenting:

(a) the terms of any health service corporation membership contract issued or to be issued; or

(b) the benefits or advantages promised thereby.

(2) No person may make any misleading representation or any misrepresentation as to the financial condition of any health service corporation.

(3) No person may make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of a health service corporation which is untrue, deceptive, or misleading.

(4) No person may make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any health service corporation membership con-

tract for the purpose of inducing or attempting or tending to induce a member to cancel or convert any membership contract.

(5) No person may file with any public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a health service corporation with intent to deceive.

(6) No person may make any false entry in any book, report, or statement of any health service corporation with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom that health service corporation is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of that health service corporation in any book, report, or statement of the health service corporation.

(7) No person may make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a health service corporation or of an organization proposing to become a health service corporation and which is calculated to injure any person engaged or proposing to engage in the business of operating a health service corporation.

(8) No person may enter into agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of the operation of health service corporations.

History: En. 40-5918 by Sec. 18, Ch. 319, L. 1975; R.C.M. 1947, 40-5918(intro.), (1) thru (7).

33-30-306. Discrimination between individuals — restrictions — ratesetting by commissioner prohibited. (1) No person may knowingly make or permit any unreasonable discrimination between individuals in any classification which may be established by a health service corporation and of essentially the same condition of health in the amount of dues or rates charged for any membership contract or in the benefits payable thereunder or in any of the terms and conditions of such contract or in any manner whatever.

(2) Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

(3) Nothing contained in subsection (1) includes within the definition of discrimination any of the following practices:

(a) readjustment of the rate of payment for membership in a health service corporation under a group contract based on the loss or expense experience thereunder at the end of the first or any subsequent contract year thereunder which may be made retroactive only for that contract year;

(b) in the case of membership contracts issued on the preauthorized bank draft or similar plans, making allowance to members in an amount which fairly represents the saving in collection expense;

(c) reduction of the rate of payment for group contracts covering a large number of members, but not exceeding savings in administrative expenses reasonably attributable to these contracts as compared with contracts offering similar benefits to smaller numbers of members;

(d) issuing individual membership contracts on a "salary savings" or payroll deduction plan reasonably commensurate with the savings made by use of such plan.

(4) Nothing in this chapter gives the commissioner power to fix and determine a rate level by classification or otherwise.

History: (1), (2)En. 40-5918 by Sec. 18, Ch. 319, L. 1975; Sec. 40-5818, R.C.M. 1947; (3)En. 40-5919 by Sec. 19, Ch. 319, L. 1975; Sec. 40-5919, R.C.M. 1947; R.C.M. 1947, 40-5918(8), 40-5919.

33-30-307 through 33-30-310 reserved.

33-30-311. Enrollment representative. (1) A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this chapter is an enrollment representative of that corporation.

(2) The definitions of enrollment representative as defined in this chapter do not include an individual:

(a) employed and used by enrollment representatives for the performance of clerical, stenographic, and similar office duties;

(b) employed and used for incidental taking of an application for coverage from time to time in the office of the employing enrollment representative;

(c) who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract.

History: En. 40-5908 by Sec. 8, Ch. 319, L. 1975; R.C.M. 1947, 40-5908.

33-30-312. Enrollment representative — filing with and approval by commissioner — license. (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed as an enrollment representative. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. The commissioner shall issue to that appointee a license which states that the person named is a constituted enrollment representative of the corporation in this state, if, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's enrollment representative; and

(b) he qualifies under the provisions of this section.

(2) For appointees who have not acted as an enrollment representative for a health service corporation for a period of 2 years prior to July 1, 1975, if he considers it desirable, the commissioner may require an appointee to submit to an examination to determine the qualifications of the appointee to act as an enrollment representative in this state. This examination shall inquire into an applicant's knowledge of the provisions of this chapter and of the forms submitted and utilized by the employing corporation.

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its enrollment representative, that person has a temporary enrollment representative's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an enrollment representative ceases on the day the corporation is notified of rejection.

History: En. 40-5909 by Sec. 9, Ch. 319, L. 1975; R.C.M. 1947, 40-5909.

33-30-313. Licenses — refusal to issue — suspension — revocation — hearing. (1) If for cause shown and after a hearing or examination the commissioner determines a person is unsuitable to act as an enrollment representative, he shall:

(a) (i) refuse to issue a license; or

(ii) revoke a license previously issued; and

(b) notify in writing both the appointee and the corporation of refusal.

(2) Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an enrollment representative to act for it, a license issued or a renewal thereof expires on January 1 after its issuance. A license may be renewed annually upon payment of the annual license renewal fee as prescribed in 33-30-204.

(3) The commissioner may suspend, for not more than 12 months, or revoke or refuse to continue any license issued under this chapter if he finds that as to the licensee any one or more of the following causes exist:

(a) any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) obtaining or attempting to obtain a license through misrepresentation or fraud;

(c) violation of or noncompliance with applicable provisions of this chapter or willful violation of any lawful rule or order of the commissioner;

(d) misappropriation or conversion to his own use or illegal withholding moneys or property belonging to the health service corporation, its members, beneficiaries, or others and received in conduct of business under the license;

(e) conviction of a felony involving moral turpitude;

(f) fraudulent or dishonest practices in the conduct of his affairs under the license; or

(g) incompetence, untrustworthiness, or injury and loss to the public while acting under the license.

(4) The action taken under subsection (3) shall be the result of a hearing granted the licensee with 20 days' notice. The notice and the reasons for the commissioner's action shall be by certified mail to the licensee and the corporation.

History: En. 40-5910 by Sec. 10, Ch. 319, L. 1975; R.C.M. 1947, 40-5910.

Parts 4 through 9 reserved

Part 10

Health Service Corporation Plans

33-30-1001. Newborn infants covered by insurance by health service corporation. No disability insurance plan or group disability insurance plan issued by a health service corporation, which in addition to covering the persons insured also covers members of such a person's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each such policy shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person.

History: En. Sec. 5, Ch. 74, L. 1973; R.C.M. 1947, 15-2304.1.

33-30-1002. Disability coverage of services of state institutions — provision void — rate of payment. (1) From and after February 14, 1973, it shall be unlawful for any health service corporation issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution, provided such services to such insured would be covered by such disability insurance policy if rendered to him outside such Montana state institution.

(2) A disability insurance policy shall be deemed to be "issued in Montana" if the insured purchasing such disability insurance policy is, at the time of such purchase, residing in the state of Montana.

(3) If the exclusion, prohibited by this section, should appear in a disability insurance policy issued in Montana after February 14, 1973, such provision shall be deemed void and such disability insurance policy will be deemed to cover services rendered the insured in a Montana state institution if such services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution shall be to the same extent and at the same rates, according to the provisions of such disability policy, which would be paid for such services if rendered outside a Montana state institution.

History: En. Secs. 1, 2, 3, 4, Ch. 50, L. 1973; R.C.M. 1947, 40-4035(part), 40-4036, 40-4037, 40-4038.

33-30-1003. Continuation of coverage for handicapped — individual contracts. (1) An individual hospital or medical service plan contract, delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3738 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3738, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3738, 40-3740(part).

33-30-1004. Continuation of coverage for handicapped — group contracts. (1) A group hospital or medical service plan contract, delivered or issued for delivery in this state after October 28, 1971, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the hospital or medical service plan corporation, by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) The provisions of this section shall have equal application to hospital or medical expense insurance policies, and hospital and medical service plan contracts, any other exemption or law to the contrary notwithstanding.

History: (1)En. 40-3739 by Sec. 1, Ch. 298, L. 1971; Sec. 40-3739, R.C.M. 1947; (2)En. Sec. 2, Ch. 298, L. 1971; Sec. 40-3740, R.C.M. 1947; R.C.M. 1947, 40-3739, 40-3740.

TITLE 34

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